

Before the  
SURFACE TRANSPORTATION BOARD

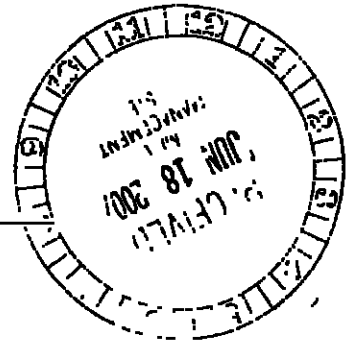
DOCKET NO AB 865-X

HONEY CREEK RAILROAD, INC -ABANDONMENT  
IN HENRY COUNTY, IN

and

DOCKET NO FD 34869

HONEY CREEK RAILROAD, INC  
PETITION FOR DECLARATORY ORDER



**MEMORANDUM IN REPLY TO PETITION FOR DECLARATORY ORDER  
AND IN SUPPORT OF MOTION TO REOPEN AB 865-X AND RECONSIDER  
DECISIONS THEREIN, AND TO CONSOLIDATE AB 865-X AND FD 34869**

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**INTRODUCTION**

This request for a declaratory order involves a short section of inactive track that was sold by Conrail in 1993 and is now the subject of an abandonment proceeding by Honey Creek Railroad ("HCR"). Because of a dispute with an adjoining property owner pending in state court, the board has been asked to make a declaratory ruling. The only declaratory ruling possible at this time is the Board has no jurisdiction over the track section. The owner of the tracks is not a carrier. When used the tracks were a spur. The tracks were abandoned before the requested abandonment order was issued in August 2004. The tracks are abandoned today.

**STATEMENT OF FACTS**

William E. Smith ("Smith") is an Indiana farmer and feed mill owner. He owns three elevators: one in Henry County, a second in Rush County, and a third in Morristown (Smith Dep. 5-6).<sup>1</sup> Smith operates the elevators through a wholly owned company called Morristown Grain Co, Inc. ("Morristown Grain"). (Smith Dep. 6, Doc. Req. Response 9).<sup>2</sup>

Smith sells his grain FOB at his elevators. The purchaser arranges for the hopper cars that are filled at the elevators. Smith provides an engine to push or pull the cars.

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<sup>1</sup> Deposition Transcript of William E. Smith ("Smith Dep."), February 12, 2007, attached as Exhibit H to Declaration of Kathleen Clubb Kauffman ("Kauffman Decl.")

<sup>2</sup> See Ex. H to Kauffman Decl., also Honey Creek Railroad, Inc.'s Response to Roberts' Request for Production of Honey Creek Railroad, Inc. ("Doc. Req."), September 13, 2006, attached as Exhibit F to Kauffman Decl.

from the interstate railroad (Norfolk Southern or CSX) to his elevator (Smith Dep 21-23, 34 at Ex H to Kauffman Decl ) In each case, Smith owns the tracks to his elevator The spur at Morristown is owned by Smith through some entity other than HCR The tracks to the other two elevators are owned by HCR. HCR was formed by Smith in 1993 to own the track Smith is the sole shareholder of HCR (Smith Dep 7-15, McGathcy Dep Ex. 4)<sup>3</sup> HCR has no employees (McGathcy Dep Ex 5 at Ex K-2 to Kauffman Decl )

The Rush County tracks were purchased from Indiana Hi-Rail, a private line rather than a common carrier line (Smith Dep 12, 26 at Ex H to Kauffman Decl ) Smith purchased the line because Indiana Hi-Rail was going to scrap it if Smith did not buy it Similarly, the Henry County spur was purchased from Conrail to keep it from being scrapped in October 1993 (Smith Dep 14-15, 97 (Conrail was going to abandon this railroad and Smith purchased it to serve [his] grain terminal)) In the Finance Docket approving the purchase, Honey Creek is designated a "non-carrier" (See Exhibit P to Kauffman Decl Honey Creek Railroad, Inc , Acquisition and Operation Exemption – Line of Consolidated Rail Corporation. FD 32332, served September 20, 1993) The portion of the Conrail line north of the grain elevator was abandoned, leaving only the stub-ended portion serving Morristown Grain (See Exhibit Q to Kauffman Decl Consolidated Rail Corporation – Abandonment Exemption – in Henry and Madison Counties, IN, AB 167 (Sub No 1122X) served December 21, 1993 ) Smith financed the later purchase through a grant and loan from the Indiana Department of Transportation ("INDOT"), which took a security interest on the rails (Smith Dep 30 at Ex H to

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<sup>3</sup> See Ex H to Kauffman Decl , also Exhibit A from Deposition Transcript of Michael McGathcy ("McGathcy Dep "). attached as Exhibit K-1 to Kauffman Decl

Kauffman Decl ) Smith could request the grant because HCR claimed to be a "railroad" <sup>4</sup>

The two sets of track owned by HCR to serve the Henry County and Rush County elevators are nearly identical. Both are less than six miles in length. Both are stub-ended. They start at the respective elevator and end at the respective interstate line. Both are wholly contained within one county of one state. (Smith Dep 7-15 at Ex. H to Kauffman Decl.) The majority of the rail is light weight, primarily 100 pound in the case of Henry County, with only a few miles of 130 pound and about a hundred feet of 140 pound rail. (Smith Dep 100-01 at Ex. H to Kauffman Decl.) Because of the different sizes of the elevators they serve, the Henry County rails are only responsible for about a quarter of HCR's traffic. (Smith Dep 76 at Ex. H to Kauffman Decl.) Both have a single customer which is also wholly owned by Smith: Morristown Grain <sup>5</sup> (Interrog 3, Doc Req Response 9, Smith Dep 9, 17) <sup>6</sup>

HCR does not charge Morristown Grain for the service it provides.

Q Were there arrangements between Morristown Grain and Honey Creek Rail as to the cost for transporting the grain on the line in Henry County?

A No. We just run it as a branch off the --off the Norfolk Western [sic] and hauled our own products down there. And that was the main reason for having the railroad.

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<sup>4</sup> HCR obtained certain loans and grants from the INDOT for both the Rush County line and the Henry County line. Its presentation of itself as a railroad in front of the state agency does not make it a railroad carrier, which is subject to the Board's jurisdiction under federal law. As the analysis in Part IA in the argument section shows, HCR was a non-carrier.

<sup>5</sup> Under examination from his counsel, Smith testified that one time the Henry County rails were used to bring in an engine to a peaking station. (Smith Dep 102.) He also testified that "we didn't have any shippers" (Smith Dep 103) and "Well, we just pulled those flat cars up there for kind of a special exception. I mean, there wasn't a customer as such as they was on the line, settled on the line. It was just an unload, off-loading operation, is what it amounted to." (See Ex. H to Kauffman Decl.)

<sup>6</sup> See Honey Creek Railroad, Inc.'s Response to Roberts' Interrogatories to Honey Creek Railroad, Inc. ("Interrog."), attached as Exhibit G to Kauffman Decl., Doc. Req. at Exhibit F, and Smith Dep. at Exhibit H to Kauffman Decl.

Q. Okay So it wasn't like Honey Creek sent a bill to Morristown Grain for operating the rail?

A No<sup>7</sup>

Morristown Grain transfers money to HCR as necessary to meet operating expenses (Smith Dep. 60-61 at Ex H to Kauffman Decl ). HCR maintains no schedule and files no tariffs (Smith Dep 21, 98 at Ex II to Kauffman Decl ) Smith could not produce a connection agreement with Norfolk Southern (Smith Dep 87 at Ex H to Kauffman Decl ) Although all *carriers* are required to file their Operating Time Table and Operating Rule Book with INDOT, these documents have not been filed for HCR (McCathey Dep 26, 34 at Ex J to Kauffman Decl )<sup>8</sup> Also, consistent with its non-carrier status when it first acquired the Henry County spur, HCR never filed any documents with the ICC or the Board between its 1993 acquisition and its 2004 abandonment application

Further, HCR has not maintained, built or received revenue from any buildings, loading platform, agent, station, telegraph, and telephone or fiber optic lines HCR maintains no bridges or connections (Interrog 11 at Ex G to Kauffman Decl , Smith Dep. 27 at Ex H to Kauffman Decl ) It owns no rail cars (Smith Dep 33 at Ex H to Kauffman Decl ) Smith testified that he had no obligation to keep maintenance or financial records (Smith Dep 28-29 at Ex H to Kauffman Decl.; Interrog 1, 2 at Ex G to Kauffman Decl ) These facts show that these rails, like the set of rails serving the Morristown elevator, are spurs

There is no dispute that HCR abandoned all use of the Henry County spur in the 1990's, long before it filed for abandonment authority in 2004 Henry County records conclusively show that a portion of the tracks between the elevator and the Norfolk

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<sup>7</sup> See Smith Dep 21 at Ex H to Kauffman Decl

<sup>8</sup> See Deposition Transcript of Michael McGathey ("McGathey Dep "), April 10, 2007, attached as Ex J to Kauffman Decl

Southern line were paved over in August 1996 (Thornburg Dep 15-16, Miller Dep 6-9)<sup>9</sup> With the paving in place, the tracks could not be used (Smith Dep 94-95 at Ex H to Kauffman Decl (tracks unusable until asphalt removed)) Smith testified that he did not know about the paving (Smith Dep 72-73 at Ex H to Kauffman Decl , Interrog 5 at Ex G to Kauffman Decl ) It was impossible to miss the paving if a train had attempted to run on the tracks after August of 1996 However, Smith contends that the tracks were used until sometime in 1999, when an elevator grain bin collapsed and blocked the tracks, and the elevator closed (Smith Dep 16 at Ex H to Kauffman Decl , Interrog 4 at Ex G to Kauffman Decl ). This claim is not credible or consistent with the physical evidence. However, whether traffic stopped in 1996 or in 1999, it clearly stopped long before the abandonment proceeding was filed in August 2004

HCR files an annual report with the Indiana Department of Transportation The 2000 report states that the total track mileage was 13.5, with 6.5 of this track designated as "main line" (McGathey Dep Ex 5 at Ex. K-2 to Kauffman Decl ) The report for 2001 states the total track mileage as 6.5 miles (McGathey Dep Ex 4 at Ex. K-1 to Kauffman Decl ) The difference includes the subtraction of the Henry County spur Smith removed the few miles of 130 pound track on the Henry County spur and moved it to the Rush County spur Norfolk Southern removed the switch that had connected the Henry County spur to its line<sup>10</sup> (Smith Dep 88 at Ex H to Kauffman Decl , Interrog 8

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<sup>9</sup> See Deposition Transcript of Mark Thornburg ("Thornburg Dep"), February 12, 2007, attached as Exhibit L to Kauffman Declaration. Deposition Transcript of Rickey Miller ("Miller Dep"), February 12, 2007, attached as Exhibit M to Kauffman Declaration

<sup>10</sup> HCR may also refer to Smith Dep Ex 9 This purports to be a Norfolk Southern document that states "HCCR advised 11/1/01 that rail service had been discontinued " Consequently, the Norfolk Southern engineering department received a "Track Retirement Request" form on December 1, 2001 to remove 180 feet of track where the Henry County spur connected to Norfolk Southern The track retirement was designated "complete " Norfolk Southern refused

at Ex G to Kauffman Decl.) After Smith removed the track, all that was left on the Henry County spur was 3 miles of 100 pound rail not connected to the Norfolk Southern tracks Smith acted without notice to or permission from the Indiana Department of Transportation which had a security interest in the rail (McGathey Dep Ex 12 at Ex K-3 to Kauffman Decl.)

In early 2002, questions arose at INDOT about whether the Henry County spur had been "abandoned " When asked, Smith reported that he had "severed its Sulfur Springs Line [Henry County line] and begun to salvage the track materials " (McGathey Dep. Ex. 12, Smith Dep Ex. 7)<sup>11</sup> After being discovered, INDOT told Smith to stop salvage activity until the security interest issues were resolved Smith was also asked to obtain an abandonment certificate from the STB. Smith petitioned for and received a new grant from INDOT which was used to pay off the original grant The security interest on the Henry County rails was released and a new security interest was placed on the Rush County spur (Smith Dep 47 at Ex H to Kauffman Decl )

In August 2002, INDOT followed up on its February instruction to Smith to file for abandonment authority with the STB Despite Smith's abandonment of the line, he still had not filed for authority This is what the business records of INDOT reflect about the conversation

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Roberts' request for documents, but this exhibit was later represented by HCR's counsel as having been given to him by one of his "contacts" at Norfolk Southern (Smith Dep 64) This document is not a business record of HCR and was not produced by Norfolk Southern as its business record in the normal course of discovery It cannot be authenticated and therefore HCR should not be permitted to rely on it As such it must be rejected because it cannot be authenticated

<sup>11</sup> See Ex K-3 to Kauffman Decl , Exhibit 7 from the Deposition Transcript of William E Smith ("Smith Dep Ex "), attached as Exhibit I-1 to Kauffman Decl

I spoke with Bill Smith, President of Honey Creek Railroad this morning in response to your email. I advised Bill that it was in his best interest to get his abandonment application filed with the STB as soon as possible. He expressed some hesitation to do this as he doesn't want the right-of-way to revert (as it would once the STB approves abandonment). As an alternative, Honey Creek plans to instruct its M-of-W contractor to remove the cross bucks and any crossing signals and to conspicuously remove a section of rail on both sides of each crossing. Once this is done, hazardous materials trucks and school buses are no longer required to stop at the "crossings."

(See Ex O to Kauffman Decl )<sup>12</sup> At the deposition, Smith confirmed the conversation did occur.<sup>13</sup> As planned, the signs and rails at crossings were removed in 2002. (Smith Dep 50-51 at Ex H to Kauffman Decl ) However, Smith continued to delay filing for abandonment authority. It was not until August 2, 2004 that Honey Creek filed its notice of exemption. On August 20, 2004, the Board issued its order stating that the abandonment exemption would be effective September 21, 2004, and a notice of consummation had to be filed by August 20, 2005. HCR agreed to a notice of interim trail use, but no agreement was reached and the notice expired. (Interrog 10 at Ex G to Kauffman Decl )

Approximately two-thirds of a mile of the Henry County spur bisects a farm field owned by Gary Roberts. By the spring of 2005, the right of way was a blight. For years, the right of way carried no traffic, was not maintained, and caused flooding on Roberts'

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<sup>12</sup> Email from Mike Scime to Larry Lovcall, August 22, 2002, produced by INDOT in response to request for production of documents by Roberts.

<sup>13</sup> It was difficult, to say the least, to pin Mr. Smith down on this conversation. Before he took refuge in total amnesia, this was his testimony:

Q Do you recall telling Mike Scime that you were hesitant about filing the abandonment application because you didn't want the right of way to revert to the property owners?

A Could have been. I think so.

Q Did you have some reservations about filing an abandonment application because of the reversionary rights of property owners?

A I don't know that I had that. I did—I do remember saying something about that. (Smith Dep 48-49)

fields (See Roberts' Aff) Elsewhere, several crossings had been paved over and rails had been removed The physical appearance of the right of way and the lack of use declared to the common observer that it had been abandoned (See Smith Dep Exs 10-21 at Ex 1-2 to Kauffman Decl) Roberts removed some of the rails preparatory to returning the right of way to its original grade A dispute between Smith and Roberts ensued, resulting in a state court action over their respective rights HCR successfully moved to have a question referred to the Board for advisory ruling

On April 18, 2006, HCR filed a petition for a declaratory order and requested a new Finance Docket number for the petition rather than filing it in the open docket for the abandonment proceeding On June 30, 2006, counsel for Roberts requested an additional extension of time in which to conduct discovery, noting that the case

“presents important issues as to whether *de facto* or *de jure* abandonment occurred prior to HCR's 2004 request for abandonment authority or before the actions at issue and the underlying state proceeding occurred The Board and courts have recognized that whether a railroad has abandoned a line turns on the railroad's “objective intent,” and further that there is no rigid formula for determining intent.”

On July 6, 2006, HCR filed a strong objection to the requested extension maintaining that there were no relevant facts to investigate because Roberts could not dispute the abandonment given the state of case law and the issuance of the August 20, 2004 abandonment order (See FD 34869, Reply of Honey Creek Railroad, Inc to the Roberts Supplemental Petition for Further Extension of Time, Doc 216972, July 6, 2006) The Board granted the requested extension to permit time for discovery on July 7, 2006 The Board stated

HCR argues that Roberts' request for a further extension of time is improper because Roberts seeks discovery on factual issues that are irrelevant and collateral

to the matter before the Board Roberts' extension request to conduct discovery and file a reply is reasonable and will be granted

(Doc 37177 STB, served July 10, 2006)

In its Reply, HCR also stated "The HCR abandonment proceeding has been concluded with the exception of filing a notice of consummation which has been postponed with the consent of the Board as a consequence of the pending state court litigation" (See Honey Creek Railroad, Inc – Petition for Declaratory Order, FD 34869, Doc. No. 216738 at p 2) HCR has petitioned four times for an extension of the time in which to file the notice of consummation If HCR did not intend to abandon the Henry County spur, under its interpretation of the law, it could have simply let the August 20, 2005 deadline pass Instead, it has repeatedly filed to roll the deadline forward, and now has an extension until February 11, 2008 <sup>14</sup>

HCR tried one more time to stop discovery through a request for a protective order on July 18, 2006, again asserting that no discovery could be relevant to the issue before the Board (See FD 34869, Expedited Motion for Protective Order, Doc 217081, July 18, 2006 at 2) The Board denied the motion, noting that it had already granted Roberts the right to conduct discovery (See FD 34869, Doc 37214 STB decision served July 20, 2006) Since that time, the parties filed (and the Board has approved) several unopposed requests to extend the deadline for Roberts' brief to permit discovery Over the last year, extensive settlement discussions have taken place as well as discovery

Obtaining discovery from HCR has been difficult Despite extensive document requests, the only documents it produced were a handful of property tax notices For the rest, HCR said it had no documents, retained no documents, or there were no responsive

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<sup>14</sup> See Honey Creek Railroad, Inc – Abandonment Exemption – in Henry County, IN, Docket No 865-X (STB, served February 2, 2007)

documents other than those already in the STB docket or previously discovered through a document request to the Indiana Department of Transportation. (Smith Dep 6 at Ex H to Kauffman Decl ) However, long after the prescribed time period for HCR's production of documents had expired, documents miraculously appeared when necessary to bolster HCR's arguments (See Smith Dep 64 at Ex H to Kauffman Decl )<sup>15</sup> For Mr Smith's part, he testified that he could not remember if he made improvements at rail crossings as represented in the loan papers with INDOT (Smith Dep 31 at Ex H to Kauffman Decl ), did not recall seeing a document request (Smith Dep 34 at Ex H to Kauffman Decl ), did not remember answering the interrogatories or signing them (Smith Dep. 35 at Ex H to Kauffman Decl ), and he "has no idea why" he waited until August 2004 to file abandonment proceedings after being told in February 2002 that he should do so (Smith Dep 63)<sup>16</sup>

### **ARGUMENT**

On the presumption that the Board has exclusive jurisdiction, the Circuit Court of Henry County has requested a ruling from the Board on the following question

Under the orders and decisions of the STB in STB Docket AB-865X, *Honey Creek Railroad, Inc -Abandonment Exemption-in Henry County, Indiana*, did Honey Creek Railroad Company obtain and exercise in accordance with STB regulations abandonment authority so as to remove its railroad right of way and track materials placed thereon from the national rail

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<sup>15</sup> In addition, on March 22, 2007 after the Smith Deposition, and six months after the document production deadline, HCR produced bills of lading that it maintains show use of the Henry County spur in 1999. The late production of allegedly self serving documents after depositions closed cannot be permitted. The documents do not on their face allow use and the late production violates discovery obligations.

<sup>16</sup> HCR's failure or refusal to produce evidence peculiarly within his knowledge and may warrant the inference that the evidence would be unfavorable to his contention. See *Indianapolis and Cincinnati Traction Company v. Montfort*, 80 Ind App 639, 646 (Ind Ct App 1923)

transportation network and the jurisdiction of the STB and subject them to the claims of Defendants under Indiana law?

Pursuant to that order, HCR filed its petition for declaratory relief and this new finance docket was opened. In considering its answer to the Henry County Circuit Court, the first question for the Board is whether, today, it has jurisdiction to answer the question.<sup>17</sup> See *RLTD Railway Corp v Surface Transp Board*, 166 F 3d 808 (6th Cir 1999) (affirming the STB's decision that it lacked jurisdiction in a proceeding, noting the STB's considerable discretion in its determination of jurisdictional facts, noting the entity was not an interstate carrier, and concluding the STB clearly had not found it in the overriding interests of interstate commerce to assume jurisdiction.")

The answer to the question of the Board's current jurisdiction requires an examination of (1) the use of the Henry County rails owned by HCR and the non-carrier status of HCR, (2) HCR's conduct before the Board's August 20, 2004 order authorizing abandonment of the Henry County spur, and (3) HCR's conduct after that order was issued. The facts show (1) when the Henry County rails existed, HCR was a non-carrier and used the rails as a spur so today, the Board has no authority or jurisdiction over questions related to their abandonment, (2) the rails were *de facto* abandoned prior to the petition for abandonment authority, depriving the Board of jurisdiction today even if the tracks were not a spur, and (3) HCR has improperly manipulated the abandonment

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<sup>17</sup> It is well-established that a court has jurisdiction to determine its own jurisdiction *Okoro v Bohman*, 164 F 3d 1059, 1063 (7<sup>th</sup> Cir 1999) (citations omitted). Before considering the merits of the case, the court must resolve the jurisdictional issue first *Crawford v United States*, 796 F 2d 924, 928 (7<sup>th</sup> Cir 1986). Further, a question as to a court's jurisdiction can be raised at any time *Sullivan v Lemoncello*, 36 F 3d 676 (7<sup>th</sup> Cir 1994). Any objections to the subject-matter jurisdiction of a court cannot be waived *Prizevoits v Indiana Bell Telephone Co*, 76 F 3d 132, 134 (7<sup>th</sup> Cir 1996).

process by failing to file its Notice of Consummation of abandonment long after the line was both *de facto* and *de jure* abandoned, again, depriving the Board of authority today

Although it is not necessary to consider the state of the Board's jurisdiction in August of 2004 in order to decide what jurisdiction it has today, the Board may wish to do so. To facilitate that potential review, Roberts, as an interested party, has filed a Motion To Reopen AB 865-X and Reconsider Decisions Therein, And To Consolidate AB 865-X and FD 34869. This memorandum is filed in support of that motion. If the Board undertakes that reconsideration, the facts will show that in August 2004, the track in question was a spur and operated by HCR, a non-carrier, so that the Board had no authority or jurisdiction over its abandonment. It will also find that the Henry County spur had been *de facto* abandoned prior to August 2004, depriving the Board of jurisdiction at the time it issued the abandonment decision.

As a result of its lack of jurisdiction today and in August 2004, the Board should rule that the railroad right of way and track materials placed thereon are not part of the national rail transportation network and are not subject to the jurisdiction of the STB. This dispute, between neighbors over approximately a mile of tracks in Henry County, Indiana, should be resolved in state court under state law.

- I. When it existed, HCR was a non-carrier and used the rails as a spur so today the Board has no authority or jurisdiction over questions related to their abandonment.**
  - A. HCR has always been a non-carrier, which, as matter of law, is not subject to the jurisdiction of the Board.**

The Board's jurisdiction is limited to "transportation by *rail carrier*." 49 U.S.C. § 10501(a), *Bar Techs., Inc. v. Conemaugh & Black Lick R.R.*, 73 F. Supp. 2d 512 (D. Pa. 1999) (citing numerous administrative decisions of the Board and its predecessor, the

Interstate Commerce Commission) The Board has no jurisdiction over non-carriers like HCR. *See id*

A “rail carrier” is defined as “a person providing common carrier railroad transportation for compensation ” 49 U S C § 10102(5) Courts have determined that a railroad is a common carrier railroad “if it purports to hold itself out as a common carrier for hire and if there is an ostensible and actual movement of traffic for the public for hire ” *Nevada v DOE*, 457 F 3d 78, 86 (D C Cir 2006), *Bar Techs* , 73 F Supp 2d at 515 (citations omitted), *Kelly v General Electric Co* , 110 F Supp. 4, 6 (D Pa 1953) As the *Kelly* court well explains.

A common carrier has been defined generally as one who holds himself out to the public as engaged in the business of transportation of persons or property from place to place for compensation, offering his services to the public generally The distinctive characteristic of a common carrier is that he undertakes to carry for all people indifferently, and hence is regarded in some respects as a public servant The dominant and controlling factor in determining the status of one as a common carrier is his public profession as to the service offered or performed

*Kelly*, 110 F Supp at 6

Thus, the principal test for the determination of a railroad as a common carrier is “whether there is a bona fide holding out coupled with the ability to carry for hire ” *Nevada*, 457 F 3d at 86 The test is an objective one, relying upon what the carrier actually does rather than upon the label which the carrier attaches to its activity or the purpose which motivates it *United States v Brooklyn Eastern Dist Terminal*, 249 U S 296, 304 (1919), *Lone Star Steel Co v McGee*, 380 F 2d 640, 648 (5<sup>th</sup> Cir 1967). *cert denied*. 389 U S 944 (1967) (involving different statute but addressing identical definition of “common carrier”)

In applying the test, courts often look at a number of factors including, but not limited to, the number of shippers, the relationship between the carrier and the shippers, the method of charging fees for the service (whether the carrier charges fees for all people indifferently or negotiates the fee case by case), any indicia of reaching out to the public (e.g., advertisement), the nature of the use of the line (whether it goes to a point in another state or merely serves the purpose of loading, reloading or switching), the nature of the service, (whether the carrier engages in business of offering to transport goods or passengers by rail) See *Kieronski v Wyandotte T R. Co*, 806 F 2d 107 (6th Cir. 1986); *Lone Star Steel Co*, 380 F 2d 640, *Bar Techs.*, 73 F Supp 2d 512, *Kelly*, 110 F Supp 4

Applying those factors, the court in *Bar Techs* concluded that the company there was a non-carrier and that the Board had no jurisdiction over it because "it has no intention of operating its rail line as a common carrier for hire to shippers, but seeks only a means of transporting its own carloads of steel from" its own plant onto the interstate rail network *Bar Techs., Inc.*, 73 F Supp 2d at 515

Similarly, in the instant case, HCR merely used the Henry County line to transport grain from the elevator at Morristown to the interstate line operated by the Norfolk Southern. HCR purchased the Henry County spur from Conrail to keep it from being scrapped in October 1993 (Smith Dep 14-15, 97 at Ex H to Kauffman Decl ). After the purchase, the track only served Morristown Grain, which Smith owns in its entirety as he does HCR (Smith Dep 17 at Ex H to Kauffman Decl ). It maintained no schedule and filed no tariffs See *Facts supra*

There is no evidence that HCR ever held itself out to the general public as a carrier. HCR was not paid by Morristown Grain and there is no evidence of a contract

with Norfolk Southern (Smith Dep 21, 87 at Ex H to Kauffman Decl ) Sporadically, HCR received \$35 per car from Norfolk Southern, but that practice stopped (Smith Dep 22, 60 at Ex II to Kauffman Decl ). Morristown Grain funded HCR on an as-needed basis. (Smith Dep. 60-61 at Ex H to Kauffman Decl ) HCR also obtained grants from INDOT But HCR's own label which it attached to its activity has no bearing upon the determination of the HCR's status as a common carrier What counts is what HCR actually did See *Lone Star Steel Co* , 380 F 2d at 648

Thus, by looking at the conduct of HCR, the Board should conclude that HCR was not a carrier and, therefore, that it lacks jurisdiction over HCR

**B. The Board has no jurisdiction over the line because HCR used it as a spur.**

Under 49 U S C § 10906, "the Board does not have authority under this chapter over construction, acquisition, operation, *abandonment*, or discontinuance of spur, industrial, team, switching, or side tracks " (emphasis added) The language under this section is almost identical to that codified at 49 U S C § 10907 before Congress enacted the Interstate Commerce Commission Termination Act in 1995 ("ICCTA") The legislative history of the ICCTA shows that Congress intended the exemption of abandonment of spur tracks See *Bar Techs* , 73 F Supp 2d at 516 (citing H R Conf Rep No 311, 104th Cong, 1st Sess 179, reprinted in 1995 U S C C A N 793, 864)

In applying the statutes, the courts have repeatedly held that the Board has no jurisdiction over abandonment of spur tracks See *United States v Idaho*, 298 U S 105, 107 (1936), *Nicholson v I C C* , 711 F 2d 364, 365 (D C Cir 1983), *cert denied*, 464 U S 1056 (1984), *Brotherhood of Locomotive Eng'rs v United States*, 101 F 3d 718, 721 (D C Cir 1996), *Bar Techs* , 73 F Supp 2d 512.

The issue of whether certain trackage is a “spur” or an extension of a railroad line is “a mixed question of fact and law left by Congress to the decision of a court -- not to the final determination of either the federal or a state commission ” *Idaho*, 298 U S at 109, *Hughes v Consol -Pennsylvania Coal Co* , 945 F.2d 594, 612 (3d Cir 1991) In determining that issue, courts examine the facts of the particular case. *See id*

While consistently taking a case-by-case approach, today courts give controlling weight to the use and/or intended use of the track segment *See Nicholson*, 711 F 2d at 367-68, *Brotherhood of Locomotive Eng'rs*, 101 F 3d at 726 (“we have previously approved the ICC’s focus on use”). As the D C. Circuit held: “[i]t is *well established* that the determination of whether a particular track segment is a ‘railroad line’ . or a ‘spur, industrial, team, switching, or side’ track turns on the *intended use* of the track segment, not on the label or cost of the segment ” *Nicholson*, 711 F 2d at 367 (emphasis added) The rationale for emphasizing the use of the track, as the D C Circuit further explains, is

[I]t is sufficiently plain, from a consideration of not only the obvious purpose prompting the [Interstate Commerce Act] but also of the general nature of the tracks mentioned, that Congress intended to subject to the requirements of [section 1(18) ] so-called main or branch lines of railroad, that is, lines designed and used for continuous transportation service by through, full trains between different points of shipment or travel, and to exclude from the operation of the statute all that mass of “tracks” (as distinguished from “lines”) naturally and necessarily designed and used for loading, unloading, switching, and other purposes connected with, and incidental to, but not actually and directly used for, such transportation service

*Id* at 367-68 (citation omitted) (brackets in original), *see also Hughes*, 945 F 2d at 612

In addition to the use of the track, courts also look at other factors, including the amount of traffic over the line, whether the railroad maintained regularly scheduled service, the number of shippers, whether the railroad maintained any stations, loading

platforms, buildings, or agents alongside the line, and whether the line was constructed of light rail. See *Idaho*, 298 U.S. 105, *New York Central R Co v Chicago & Eastern Illinois R Co*, 222 F.2d 828, 830 (7th Cir. 1955). Whether the line has been used for storage or is stub-ended have also been relied upon as significant criteria. *Rochelle R R v City of Rochelle*, 1998 U.S. Dist. LEXIS 13043 (D. Ill. 1998).

Even relatively long tracks are found to be spurs if that is how they are used. In *Idaho*, the Supreme Court upheld the lower court's finding that a nine-mile track was spur on the grounds that the track was constructed to serve one customer, that the line "has never maintained a train schedule or regular service over this trackage, has never furnished express, passenger, or mail service, has maintained no buildings, loading platforms, or agent at any point along the trackage, and has had no telegraph or telephone line in connection therewith," and that practically no shipments occurred in the opposite direction. *Idaho*, 298 U.S. at 108-10.

Similarly, in *Hughes*, the Third Circuit held that a fourteen-mile track was a spur, reasoning that the line, located wholly intra-state, functioned as a route to unload and transfer shipments, did not invade the territory of another railroad, was used by only one railroad, and served only one customer.

Likewise, in the instant case, the HCR tracks in Henry County are stub-ended and serve a single customer whose owner created HCR for the sole purpose of transporting grain from the elevator to the Norfolk Southern line. HCR charges this customer no fee. HCR has no employees and owns no rail cars. It maintains no schedule and files no tariffs. It files no Operating Time Table or Operating Rule Book. Its rail is light and contained wholly within one county of one state. It has not maintained, built, or received

revenue from any buildings, loading platform, agent, station, telegraph, and telephone or fiber optic lines. There is no fact that points to these tracks being anything other than a spur since Conrail transferred them to HCR and abandoned the track and connection north of the elevator.

Thus, the track at issue is a spur. Accordingly, the Board has no jurisdiction either over the abandonment of the track or over the issues arising out of the abandonment of the line. See 49 U.S.C. § 10906.

**II. The Board has no jurisdiction today because the rails were *de facto* abandoned prior to the petition for abandonment authority.**

Courts have ruled that *de facto* abandonment can terminate the Board's jurisdiction no matter whether a *de jure* abandonment has been consummated. In 1997 *RLTD Railway*, after balancing different factors, the Board ruled that once the [ ] line was severed from the interstate rail network, "there was both a *de facto* and *de jure* abandonment of that line, and the ICC lost jurisdiction over the property." *RLTD Railway Corporation-Abandonment Exemption - in Leelanau County, MI*, Docket No. AB-457 (Sub-No. 1X), 2 STB 685, 1997 STB LEXIS 281, \* 17 (Serv. Oct. 30, 1997). The railroad appealed that decision to the Sixth Circuit. After finding that the railroad *de facto* abandoned the line, the court upheld the ICC's ruling without considering whether there was a *de jure* abandonment. *RLTD Ry. Corp. v. STB*, 166 F.3d 808, 812 (6th Cir. 1999) ("1999 *RLTD Railway*"). This ruling has two instructive indications: (1) *de facto* abandonment can occur independent of *de jure* abandonment, and (2) *de facto* abandonment can terminate the STB's jurisdiction.

Both courts and the Board have adopted the fact-specific approach in determining whether a railroad had abandoned a line. As the D.C. Circuit holds, "in determining

whether a railroad has abandoned a line, one must focus on the railroad's objective intent " *Becker v STB*, 132 F 3d 60, 62 (D C Cir 1997) (citations and internal quotation marks omitted), *see also* 1997 *RLTD Railway*, 1997 STB LEXIS 283, \* 12 n 15 No single fact controls, and the Board and courts have sometimes come to opposite conclusions on seemingly similar sets of facts *Compare Becker*, 132 F 3d 60 and *RLTD Ry Corp* , 166 F.3d 808 *with Birt v STB*, 90 F.3d 580 (D C Cir 1996), *Norfolk and Western Railway Co* , Docket No AB-290-168X (STB Serv May 4, 2005), and *Burlington Northern Railroad Co* , Docket No AB-6-346X and -335X (STB Serv June 8, 2005) In addition, the Board "enjoys considerable discretion in its determination of jurisdictional facts " 1999 *RLTD Railway Corp* . 166 F.3d at 812 Indeed, the Board can decide to exercise abandonment authority over "purely local lines operated by regulated carriers when, in the Commission's judgment, 'the over-riding interests of interstate commerce require[e] it '" *Id* at 813 But the Board did not find such over-riding interest because RLTD was not an interstate carrier. *Id*

Similarly, in this case, HCR was not an interstate carrier Moreover, all of the evidence establishes an objective intent to abandon prior to August 2004 In addition, there is nothing in the facts to suggest that the over-riding interests of interstate commerce require the Board to exercise its discretion to assert abandonment authority over a purely local line. There is no trail issue here Instead, there is only an attempt to use the Board's regulations to trump the operation of state laws on reverter to aid one party over another in a dispute over less than a mile of rails

The following facts show that Smith, the owner of HCR, had the objective intent to abandon the Henry County spur prior to August 2004

- The line north of Morristown Grain was abandoned by Conrail in 1993, and therefore severed the Henry County spur from the interstate rail network at one end and left the track stub-ended.
- The tracks had been unusable since a key crossing was paved over in 1996
- The sole use of the line was to move hopper cars back and forth to the elevator which collapsed and became inoperable in 1999
- HCR removed the Henry County tracks from the mileage it reported to INDOT in 2001
- The Norfolk Southern switch and track connecting the spur was completely retired and removed in 2001 That removal made the stub-ended track completely severed from the interstate rail network
- Smith removed almost half the track by February 2002 He did not publicly report the salvage of rails covered by the INDOT security agreement.
- In February 2002, when asked by INDOT, Smith admitted that the line had been severed and he had begun to salvage materials
- There were no tariffs to cancel because HCR had never filed a tariff HCR never even filed an Operating time Table or Operating Rule Book with INDOT HCR made no filings of any type with the STB between its 1993 acquisition of the rails as a non-carrier and its 2004 abandonment application
- The facts support that HCR was a non-carrier

- Additional track was removed near additional crossings and the crossings were paved over in August 2002
- Smith intentionally delayed filing for *de jure* abandonment because he did not want the right of way to revert
- The blight condition of the track has caused flooding and damage to Roberts' property

When some railroads stop using track or salvage track, it may or may not be conclusive evidence of objective intent to abandon a set of tracks. Companies that are actually running a railroad operation may shift traffic or rails without conclusively deciding that the right of way will no longer be used for rail purposes. This is not the case here. HCR owned two short spurs for the purpose of moving Morristown Grain's product to the interstate rail lines. When the Morristown Grain elevator at the end of the Henry County rails ceased to operate, Smith had no use for the rails. The actions he took between 2000 and 2002 conclusively show his objective intent to abandon the rails.

This is not a case where the Board should exercise discretion to maintain authority over this now purely local (and highly incomplete) set of rails to nowhere. No issues of interstate commerce are implicated. No issues of rail banking are implicated. What has happened here is the owner of a 5.9 mile spur first ignored the Board and its regulations, and then sought to manipulate the process so that the Board would provide a shield against the operation of state law. The Board was not created for this purpose.

**III. The STB has no jurisdiction over the Henry County track because HCR has already exercised its authorized abandonment even if it has not filed a notice of consummation.**

**A. Abandonment may occur and thus terminate the STB's jurisdiction even if the railroad has not filed a notice of consummation.**

It is well-established under the case law that once a carrier abandons a rail line, the line is no longer part of the national transportation system and the STB's jurisdiction terminates, although the Board is empowered to impose conditions on abandonment *Preseault v I C C* , 494 U S 1, 6 n 3 (1990), *Hayfield Northern R R Co , Inc v Chicago & North Western Transp Co* , 467 U S. 622, 633 (1984), *see also Fritsch v I C C* , 59 F 3d 248, 253 (D C Cir. 1995), *Iowa Power, Inc – Construction Exemption – Counsel Bluffs, IA* , 8 I C C 2d 858 (Dec 20, 1990). In cases where the Board attaches post-abandonment conditions to a certificate of abandonment, it retains jurisdiction *Id* , *Lucas v Township of Bethel* , 319 F 3d 595, 602 (3d Cir. 2003) If the STB imposes no such conditions, the STB's authorization of abandonment puts an end to the STB's regulatory authority *Id*

In the instant case, the Board did impose certain post-abandonment conditions, but all have been satisfied in a manner consistent with the abandonment of the spur Specifically, through the decisions respectively served August 20, 2004 and September 20, 2004, the STB attached environmental, public use and trail use conditions to the HCR's exemption The Board gave interested parties 180 days to pursue the conditions and accordingly set the effective date of the HCR's exemption to March 20, 2005.<sup>18</sup> The Board also required the HCR to file a notice of consummation when it had completed the authorized abandonment The deadline for filing such a notice was August 20, 2005 At HCR's request, that deadline was extended four times and is now set to February 11,

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<sup>18</sup> *See Honey Creek Railroad, Inc – Acquisition and Operation Exemption - Line of Consolidated Rail Corporation*, STB Docket No AB-865X (STB, Serv Sept 20, 2004), and *Honey Creek Railroad, Inc – Acquisition and Operation Exemption – Line of Consolidated Rail Corporation*, STB Docket No AB-865X (STB, Serv Aug 20, 2004)

2008 The rationale for the requested extensions was the pending state court action and then the pending request for a declaratory order The Board granted the extensions without the benefits of the facts developed during discovery or the arguments presented here

On June 7, 2006, when the HCR opposed Roberts's supplemental petition for further extension of time for filing this brief, it stated, "[t]he HCR abandonment proceeding has been concluded with the exception of filing a notice of consummation which has been postponed with the consent of the Board as a consequence of the pending state court litigation." (Reply of Honey Creek Railroad, Inc. To The Supplemental Petition of Respondent For Further Extensions of Time (June 7, 2006), at 2 )

In fact, since March 20, 2005, all the conditions of the abandonment have been satisfied Today, HCR is reduced to contending that its unilateral withholding of the notice of consummation of abandonment is sufficient to maintain the Board's jurisdiction over a rail bed with no connection to interstate commerce, no pending trail use negotiations, and, for the most part, no tracks (HCR's Br at 2-3) Oddly, the requested extensions for the filing of the notice of consummation are also evidence of the objective intent to abandon If HCR intended to abandon its abandonment, it should have simply let the deadline pass under its interpretation of the law HCR's argument contradicts the language of the rule, the history and the purpose of the rulemaking, the case law interpreting the requirement of notice of consummation, and the functions of the STB

**1. Consistent with the language, the history, and the purpose of the rule, abandonment may be consummated absent a notice of consummation.**

49 C F R § 1152.29(e)(2), in pertinent part, provides:

A railroad that receives authority from the Board to abandon a line shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line (e.g., discontinued operations, salvaged the track, canceled tariffs, and intends that the property be removed from the interstate rail network). Notices will be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation.”

The plain language above shows (1) that a railroad is required to file a notice of consummation, (2) that the purpose and function of the notice is to inform the Board that the railroad has abandoned the line, and (3) the effect of filing the notice is that once it is filed, no one can inquire whether abandonment has occurred. Nothing in the language ordains that without a notice of consummation, consummation of abandonment cannot occur. To the contrary, consummation of abandonment can occur before the filing of the notice. As the rule language shows, the function of the notice is to signify that the railroad has consummated abandonment. In other words, if actual abandonment occurs, the railroad should notify the Board that abandonment has been consummated. Thus, in terms of the timeline, abandonment can occur *before* and *independent* of the filing of the notice. This interpretation is consistent with the purpose and the history of the rulemaking.

First, the consummation notice is merely *evidence* that the railroad intends to fully abandon the line. 61 F.R. 11174, 11178 (notice of proposed rulemaking) (emphasis added), *see also* 1996 WL 734579, \* 8 (Dec. 9, 1996) (final rules). Although the Board gives a conclusive effect to a notice on the issue of consummation of abandonment, the Board never intends to make the consummation notice a *necessary requirement* in determining the railroad’s intent to abandon the line. As the STB stated in its making of the rule requiring notice of consummation.

“[N]otices [of consummation] that are filed would be deemed conclusive on the point of consummation if there are no legal or regulatory barriers to consummation. If no notice of consummation of abandonment has been filed, we would continue to look at the other facts and circumstances to determine if consummation of the abandonment had occurred.”

61 F.R. 11174, 11178, *see also* 1996 WL 734579, \* 8 (Dec. 9, 1996) (final rules)

The language above shows that the conclusive effect given to a notice of consummation only means that if a railroad files such a notice, the notice not only answers in the positive but also puts an end to the question of whether the railroad has intended to abandon a line. In other words, if there is a notice, there is an intent to abandon. But reversing the proposition to argue that if there is no notice, there is no intent to abandon is wrong. As the Board itself explains, “if no notice of consummation of abandonment has been filed, we would continue to look at the other facts and circumstances to determine if consummation of the abandonment had occurred.” *Id.*

Second, the interpretation that abandonment may occur, irrespective of the existence of a notice of consummation is consistent with the purpose of the enactment of the rule. That purpose was to codify the practice of requiring the railroad to file a notice of consummation. As the Board stated in its proposal of the rule,

“Although the practice was never codified, until 1984 the ICC required a railroad to send the agency a letter confirming that it had consummated, or fully exercised. Since then, some carriers have continued to send in these letters. Moreover, the courts have considered these letters in determining whether a line is still part of the interstate rail network.”

61 F.R. 11174, 11177

Thus, the notice-of-consummation requirement is nothing new to courts and the Board. As the following analysis shows, the case shows that consummation of

abandonment may occur notwithstanding whether the railroad files a notice of consummation

**2. Under the case law, abandonment may occur where the railroad has not filed a consummation notice.**

Under the case law, absence of a consummation notice is not determinative on the issue of whether abandonment has consummated. In *1997 RLTD Railway*, the Board addressed a similar issue to that in the instant case, i.e., whether abandonment had occurred and thus terminated the Board's jurisdiction. *1997 RLTD Railway*, 1997 STB LEXIS 281, \*9-10. In holding that abandonment did occur, the Board explicitly rejected the railroad's argument that it had not abandoned because it had not filed the required notice of consummation. *Id.* As the Board further explained, "it would be inappropriate for us to focus only on a single outward manifestation of the railroad's intent (i.e., the failure to file a letter of consummation)." *Id.* at 11-12 n. 15 (parenthesis in original). Holding otherwise will allow railroads "to manipulate the abandonment processes by invoking regulations only when it is convenient," *Id.* at 10-11. That is what happened in the instant case.

In *Becker*, 132 F.3d 60, a railroad filed for and received abandonment authority, engaged in and then terminated trail use negotiations, but filed no notice of consummation, and then three months later, sought to reopen the proceeding to negotiate a trail use agreement. The Board agreed to re-open, and the Circuit Court reversed finding on those facts, that the line was abandoned when the first NITU expired. The Circuit Court hoped, as did the Board, that the new requirement for a written notice of abandonment would eliminate the uncertainty over abandonment that the Board and the Circuit Court had to confront in that case. *Id.* at n. 2. The new rule has not worked to

eliminate uncertainty in this case because of its manipulation by HCR. Although HCR had up to a year to finish the abandonment and file the notice of consummation, it finished the abandonment on March 20, 2005 and then sat on the notice. The rule is designed to force the railroad to satisfy the abandonment conditions within a year. It is not designed to let a railroad sit on an abandoned line for a year or more after it is abandoned so that it can use the delay in filing a notice of consummation to stall the transfer of land rights.

Here, as HCR admitted, “[t]he HCR abandonment proceeding has been concluded with the exception of filing a notice of consummation which has been postponed with the consent of the Board as a consequence of the pending state court litigation.”<sup>19</sup> In other words, the HCR has finished everything as required, with the exception of the notice of consummation. Moreover, the reason is *not* to keep the abandonment proceeding open so that it may enter into agreements to preserve the line. The only reason for withholding the notice of consummation is to keep the Board’s jurisdiction, which has no bearing on the *merits* of whether the HCR has consummated abandonment.

Thus, the Board cannot give conclusive effect to the *absence* of the consummation notice and must look at specific facts of the instant case to determine whether abandonment has occurred such that it lacks jurisdiction over the instant case. The facts are what determine abandonment and hence, the Board’s jurisdiction.

**B. Given the particular facts of the instant case, consummation of abandonment has occurred.**

In determining whether a railroad has abandoned a line, “one must focus on the railroad’s objective intent.” *Becker*, 132 F.3d at 62 (citations omitted). In determining

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<sup>19</sup> See Reply of Honey Creek Railroad, Inc. To The Supplemental Petition of Respondent For Further Extensions of Time (June 7, 2006), at p. 2.

intent, courts look at a variety of indicia: "a line is fully abandoned when a certificate of public convenience and necessity is issued and has become effective, tariffs have been canceled and operations have ceased " *Id* (internal marks and citations omitted)

Moreover, "determination as to whether there is an abandonment should involve a more searching and functional inquiry about the actual intent of the parties to the transaction than reliance on "the bare formalities " *RLTD Railway Corporation- Abandonment Exemption-In Leelanau County, MI*, 1996 Docket No AB-457X, WL 476653, \*3 (STB, Serv. Aug. 23, 1996) ("1996 *RLTD Railway*") In other words, courts should examine the totality of the circumstances and balance all the factors involved in each case *See 1997 RLTD Railway*, 1997 STB LEXIS. \* 10 There, the Board found that the line had been abandoned because it was severed from the interstate rail network

In *Becker*, the court held that the railroad had abandoned the line on the grounds that the railroad (1) had sought and been granted an exemption from the requirement of a certificate of public convenience and necessity, (2) had ceased service, (3) had cancelled its tariffs, and (4) had taken the step of removing the rails Admitting that all those factors are equally consistent with discontinuance of operations as they are with permanent abandonment, the court further concluded that the railroad had expressed intent not to continue track use negotiations *See Becker*, 132 F 3d at 62 Considering all the factors as a whole, the court ruled that abandonment had been consummated and that the Board lost jurisdiction *Id* at 62-63

In the instant case, all the facts that support the conclusion that the line was abandoned before the abandonment petition was even filed support the conclusion that the line is abandoned today Similarly to *1997 RLTD Ry*, the line here was severed from

the interstate rail network by 2004. In addition, as in *Becker*, the NITU has expired without an agreement or an extension. The only thing that has not happened is the filing of a piece of paper—a notice of consummation. The notice has been delayed solely to maintain the jurisdiction of the Board. Jurisdiction is flexible, but it is not such a formless thing that it can be stretched this far. The piece of paper does not create jurisdiction, the facts do. The facts have not supported jurisdiction for several years. To permit a piece of paper unilaterally withheld by HCR to trump the facts would create the same unsupported and illogical result the Circuit Court rejected in *Becker*. See *id.* at n. 4.

Thus, when HCR petitioned the Board for a declaratory order, abandonment had already been consummated. Accordingly, the Board has not jurisdiction over HCR's petition.

**IV. If necessary, the STB should grant the Motion to Reopen AB 865-X and Reconsider Decisions rendered therein to find that it did not have jurisdiction over the rails at the time it issued its August 2004 decision.**

In its opposition to Roberts's supplemental petition for further extension of time, HCR argued that Roberts cannot raise a *de facto* argument because, according to HCR, it would constitute a collateral attack on HCR's authorized abandonment. (See HCR's Reply to Roberts's Supplemental Petition for Further Extension of Time Docket FD 34869, at 4.) Although the Board implicitly rejected that argument by granting Roberts's petition of extension of time so discovery could be conducted, we will address the issue anticipating that HCR will repeat its contention.

First, the Board can determine that it has no jurisdiction today. Depending on the grounds for that determination, it may raise questions about the Board's jurisdiction in August 2004 when it had no facts before it, but it is not necessary to reverse that decision.

Second, if the Board disagrees, it can re-open the abandonment proceeding and reconsider the orders itself. The statute, on which HCR bases its collateral attack argument, states

The court of appeals (other than the United States Court of Appeals for the Federal Circuit) has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of . . . all rules, regulations or final orders of the STB ”

28 U.S.C. § 2342. (parentheses in original)

With its plain language, the statute only prohibits any court other than a federal circuit court of appeals from reviewing final orders of the STB. But it does not prevent the Board from reviewing its own orders. To the contrary, Congress specifically allows the STB to reconsider its own decision.

The Board may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances—

- (1) reopen a proceeding,
- (2) grant rehearing, reargument, or reconsideration of action of the Board, or
- (3) change an action of the Board

An interested party may petition to reopen and reconsider an action of the Board under this subsection under regulations of the Board

49 U.S.C. § 722

Thus, the Board’s prior decision on HCR’s abandonment authority is subject to reconsideration. If the Board finds that the facts and the arguments presented here show there was material error in the orders entered in the abandonment docket, the Board can and should re-open that proceeding, reconsider its actions and then change its actions. In any event, the Board cannot decline to heed Roberts’s arguments on the issue of whether the Board retains jurisdiction today.

**V. The Board should decline to interpret Indiana state law**

HCR requests that the Board interpret I C §32-23-11-6(a)(2). The interpretation and application of an Indiana state statute is not included in the question referred for an advisory ruling and is not within the jurisdiction or expertise of the Board. If the Board issues a declaratory ruling other than a statement that it has no jurisdiction, it must limit the ruling to the question presented by Henry County Circuit Court for an advisory ruling.


**CONCLUSION**

HCR has never been a carrier. The Henry County line in HCR's hands is a spur. Only recently, HCR acted like a carrier, with track subject to STB jurisdiction, when it thought it could use the Board to give it an advantage over adjoining landowners. The Board placed the condition of the notice of consummation of abandonment on HCR to shield the public from a railroad's unlimited discretion, but HCR has withheld filing the notice despite obvious completion of abandonment so it can use the open proceeding as a sword against its neighbors. HCR waited until 2004 to file for abandonment authority eight years after portions of the track were paved over, five years after the elevator went out of business and the tracks at that end became unusable, three years after it told Norfolk Southern to remove the connection with the interstate tracks, and two and a half years after it pulled up half of the rails, paved over additional crossings and was first told by INDOT to file for abandonment authority. INDOT's records show that the reason for the delay was a desire to subvert reversionary rights of adjoining landowners under state law. The Board does not exist to assist the owner of a 5.9 mile spur in efforts to forestall the operation of state law. Roberts respectfully requests the Board issue an order

declaring that railroad right of way and track materials placed thereon are not part of the national rail transportation network and are not subject to the jurisdiction of the STB

Dated. June 18, 2007

Respectfully submitted,  
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By:   
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Yan Ge (DC Bar # 496740)  
ACKERSON KAUFFMAN FEX, PC  
1250 H Street, NW  
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[kauffman@ackersonlaw.com](mailto:kauffman@ackersonlaw.com)

John H. Brooke  
Anthony D. Rufatto  
BROOKE-MAWHORR ATTORNEYS AT LAW  
P O Box 1071  
112 E. Gilbert Street  
Muncie, IN 47308-1071  
Tel (765) 741-1375  
Fax (765) 288-7763  
*Counsel for Gary L. Roberts,  
Roberts Pipeline Construction Company, Inc.,  
and Roberts Construction, Inc*

## **CERTIFICATE OF SERVICE**

I hereby certify that I have this 18th day of June, 2007 served a copy of the Memorandum In Reply To Pctition For Declaratory Order and In Support of Motion To Reopen AB 865-X and Reconsider Decisions Therein, and To Consolidate AB 865-X and FD 34869 upon the following via first class United States Mail, postage prepaid

Richard R. Wilson, Esq  
Pa. I D #25661  
127 Lexington Avenue, Suite 100  
Altoona, PA 16601

William B Keaton, Esq  
KEATON AND KEATON, P C  
126 West Second Street  
Rushville, IN 46173

John H Brooke, Esq  
Brookc-Mawhorr Attorneys at Law  
P O. Box  
112 E Gilbert Street  
Muncie, IN 47308-1071



Kathleen C. Kauffman  
Attorney for Gary L. Roberts,  
Roberts Pipeline Construction  
Company, Inc ,  
Roberts Construction, Inc

Before the  
SURFACE TRANSPORTATION BOARD

---

DOCKET NO. AB 865-X

HONEY CREEK RAILROAD, INC.-ABANDONMENT  
IN HENRY COUNTY, IN

and

DOCKET NO FD 34869

HONEY CREEK RAILROAD, INC.  
PETITION FOR DECLARATORY ORDER

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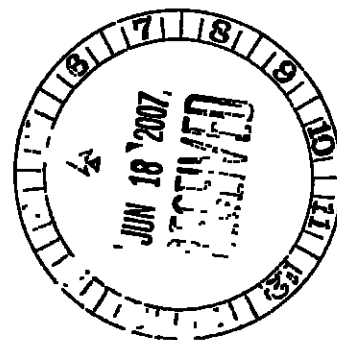
**AFFIDAVIT OF GARY ROBERTS**

---

Kathleen C. Kauffman (DC Bar # 323212)  
Yan Ge (DC Bar # 496740)  
ACKERSON KAUFFMAN FEX, PC  
1250 H Street, NW, Suite 850  
Washington, DC 20005  
Tel: (202) 833-8833  
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[kauffman@ackersonlaw.com](mailto:kauffman@ackersonlaw.com)  
*Attorney for Gary L. Roberts,  
Roberts Pipeline Construction Company, Inc.,  
and Roberts Construction, Inc*

John H. Brooke  
Anthony D. Rufatto  
BROOKE-MAWHORR ATTORNEYS AT LAW  
P.O. Box 1071  
112 E. Gilbert Street  
Muncie, IN 47308-1071  
Tel: (765) 741-1375  
Fax: (765) 288-7763  
*Of Counsel*

Dated: June 18, 2007



ENTERED  
Office of Proceedings  
JUN 18 2007  
Part of  
Public Record

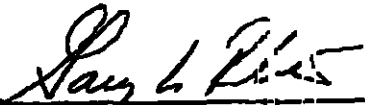
## **AFFIDAVIT OF GARY ROBERTS**

**Comes now the Affiant, Gary Roberts, and upon his oath states:**

- 1. I am an adult and competent to testify as to each and every matter set forth in this Affidavit.**
- 2. The facts set forth in this Affidavit are made upon my personal knowledge.**
- 3. I am the managing member of an Indiana Limited Liability corporation named as R & R Real Estate, LLC.**
- 4. R & R Real Estate, LLC is a limited liability corporation in good standing in Indiana.**
- 5. I and my family owned several hundred acres of farm ground in Prairie and Jefferson townships in Henry County, Indiana from 1987 to 1998.**
- 6. I and my family transferred title to the real estate to R & R Real Estate, LLC on January 30, 1998.**

7. R & R Real Estate, LLC. has owned the parcels of real estate continuously since that date of purchase.
8. Several of the parcels of real estate are transected by the Honey Creek spur line that runs from its intersection with the Norfolk and Southern railroad line at State Highway Route 36 and State Highway Route 3, north of New Castle, Indiana to a few hundred feet past the grain mill located in Sulphur Springs, Henry County, Indiana on State Route 36.
9. The real estate contains parcels between County Road 200 West and County Road 300 West in which the Honey Creek spur railroad line transects.
10. The Affiant is the individual that negotiated the purchase deals for all of the real estate.
11. Since 1996, the Affiant has not witnessed any use of the Honey Creek railroad line by any business, firm or entity
12. Since 1996, the Affiant is aware that Henry County has paved over the rail lines as the railroad crosses County Road 125 West, County Road 200 West and County Road 400 North. The map attached as "Exhibit A" depicts the intersections that have been paved since 1996.
13. The Affiant also knows that the State of Indiana through one of its contractors removed the Honey Creek rail lines that cross State Highway Route 36 as the rail line goes to the grain elevator in Sulphur Springs. This removal of the rail lines occurred in 2002.

14. The Affiant also knows that approximately 1 mile or more of rail line owned by Honey Creek railroad was removed by the State of Indiana when it performed work on State Highway 3 at the rail line's intersection with the Norfolk Southern line that travels through Henry County north and south, to Rush County.
15. Since at least 1996, the rail road has not maintained the tracks, performed repairs or inspected the rail lines.
16. Since at least 1996 there have been severe problems with drainage and flooding occurring from the failure of the railroad to properly maintain the rail bed.
17. For the past 12 years, the rail line owned by Honey Creek has been overgrown with weeds and prairie grasses to the point that a casual inspection does not reveal the existence of the railroad ties, rails or even the railbed.

  
\_\_\_\_\_  
Gary Roberts

STATE OF INDIANA

SS:  
Delaware COUNTY

Before the undersigned, a Notary Public in and for said County and State, personally appeared this 18<sup>th</sup> day of June, 2007, Gary Roberts and acknowledged the voluntary execution of the foregoing Affidavit.

WITNESS, my signature this 18<sup>th</sup> day of June, 2007.

Leslie M. Matheson  
Leslie M. Matheson, Notary

Resident of Delaware County

My Commission Expires:

January 18, 2010



Elevator

Roberts Lane

200 W

US 36

12.5 W

400 N

Paved in  
2002  
tracks removed

start  
1991  
Removed  
from lane  
to here →

Paved over

Paved over  
1996

Paved over

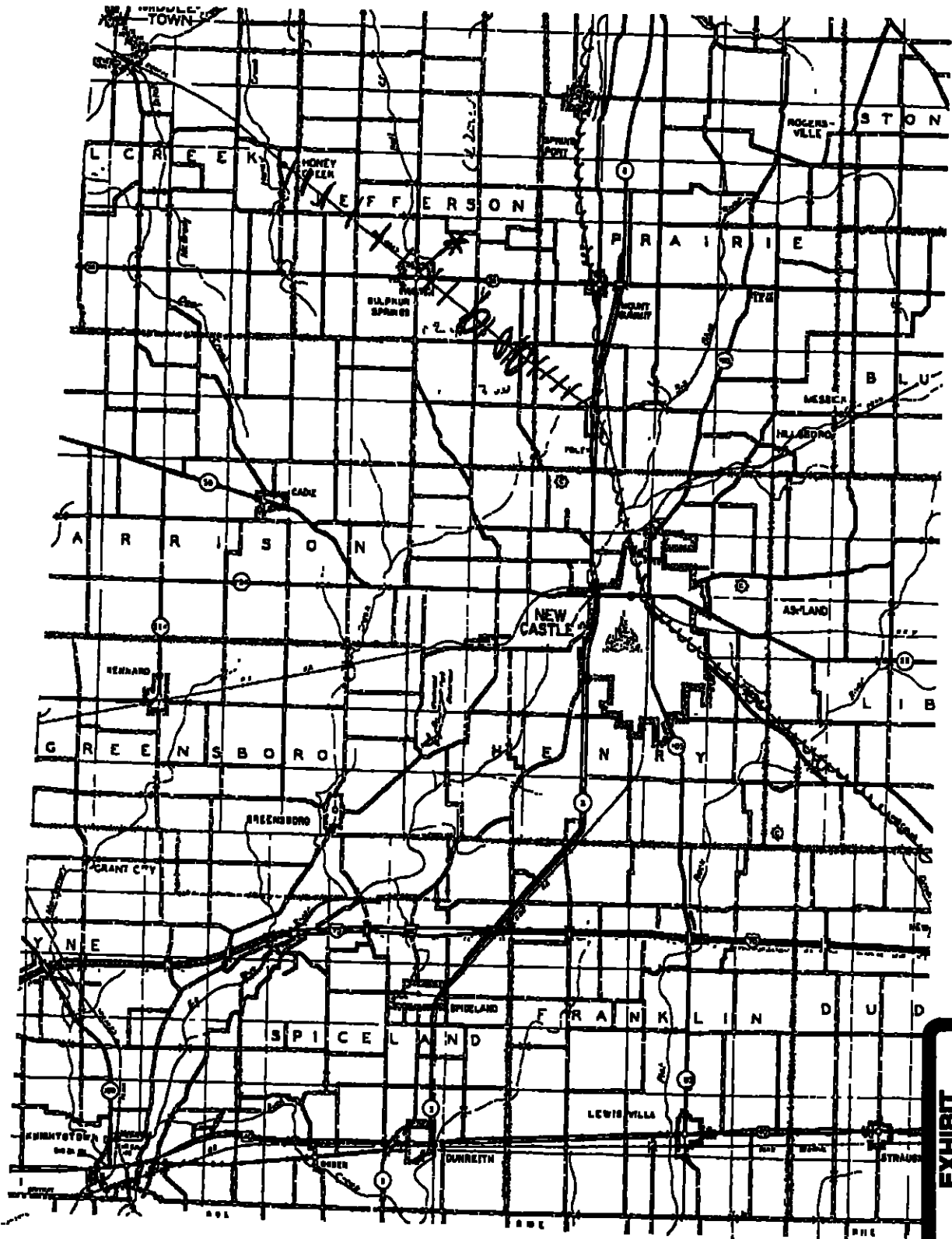
Honey Creek  
removed by city

EXHIBIT

A-1

MSB

\* Elevator location  
 Areas where tracks were paved over  
 Honey Creek railroad purchased from Conrail  
 Norfolk Southern railroad

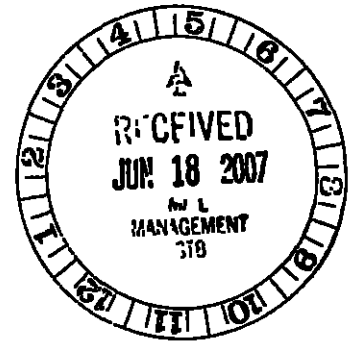


EXHIBIT

A-2

Before the  
SURFACE TRANSPORTATION BOARD

---



DOCKET NO. AB 865-X

HONEY CREEK RAILROAD, INC.-ABANDONMENT  
IN HENRY COUNTY, IN

and

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.  
PETITION FOR DECLARATORY ORDER

ENTERED  
Office of Proceedings

JUN 18 2007

Part of  
Public Record

---

**DECLARATION OF KATHLEEN CLUBB KAUFFMAN**

---

Kathleen C Kauffman (DC Bar 323212)  
Yan Ge (DC Bar # 496740)  
ACKERSON KAUFFMAN FEX, PC  
1250 H Street, NW, Suite 850  
Washington, DC 20005  
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[kauffman@ackersonlaw.com](mailto:kauffman@ackersonlaw.com)  
*Attorney for Gary L. Roberts,  
Roberts Pipeline Construction Company, Inc.,  
and Roberts Construction, Inc*

John H. Brooke  
Anthony D. Rufatto  
BROOKE-MAWHORR ATTORNEYS AT LAW  
P O Box 1071  
112 E. Gilbert Street  
Muncie, IN 47308-1071  
Tel: (765) 741-1375  
Fax: (765) 288-7763  
*Counsel for Gary L. Roberts,  
Roberts Pipeline Construction Company, Inc.,  
and Roberts Construction, Inc*

Dated: June 18, 2007

Before the  
SURFACE TRANSPORTATION BOARD

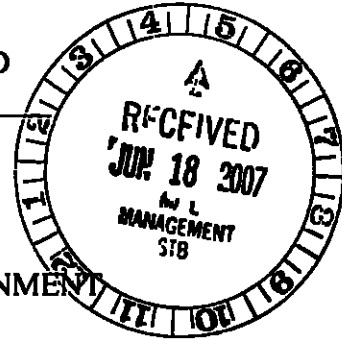
DOCKET NO. AB 865-X

HONEY CREEK RAILROAD, INC.—ABANDONMENT  
IN HENRY COUNTY, IN

and

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.  
PETITION FOR DECLARATORY ORDER



---

**DECLARATION OF KATHLEEN CLUBB KAUFFMAN**

---

My name is Kathleen Clubb Kauffman. I am over the age of 21, and I am competent to make this declaration. The facts stated herein are within my personal knowledge and are true and correct. I state as follows:

1. I am an attorney with the law firm of Ackerson Kauffman Fex, P.C. at 1250 II Street, N.W., Suite 850, Washington, D.C. 20005, counsel for Gary L. Roberts, Roberts Pipeline Construction Company, Inc. and Roberts Construction, Inc. ("Roberts") in this action. I make this declaration in support of the Memorandum in Reply to Petition for Declaratory Order and In Support of Motion to Reopen AB 865-X and Reconsider Decisions Therein, and to Consolidate AB 865-X and FD 34869.
2. I am an active member in good standing of the Bar of the District of Columbia, and have been a member in good standing at all times since my admission to the Bar in November 1980.


**3. Attached hereto, in exhibits corresponding to the sequential letter tabs, are true and accurate copies of the following documents:**

- A. Exhibit 1 from the deposition transcript of William E. Smith, taken on February 12, 2007.**
- B Exhibit 2 from the deposition transcript of William Smith.**
- C. Exhibit 3 from the deposition transcript of William Smith.**
- D. The order granting abandonment of the Honey Creek Railroad, issued by the Surface Transportation Board (the "STB") on August 20, 2004.**
- E Reply of Honey Creek Railroad to Supplemental Petition of Respondent for Further Extensions of Time, filed with STB on June 12, 2006.**
- F. Request for production of documents to Honey Creek Railroad filed on July 18, 2006 by Roberts and Honey Creek Railroad's response of September 13, 2006.**
- G. Interrogatories to Honey Creek Railroad filed on July 18, 2006 by Roberts and Honey Creek Railroad's response of September 13, 2006.**
- H. Transcript of deposition of William E. Smith.**
- I. Exhibit(s) from the deposition transcript of William E Smith.**
  - I-1 Exhibit 7**
  - I-2: Exhibits 10-21**
  - I-3: Exhibit 6**

- J. Deposition transcript of Michael S. McGathey, representative of the Indiana Department of Transportation (INDOT), taken on April 10, 2007.
- K. Exhibit(s) from the deposition transcript of Michael S. McGathey.
  - K-1: Exhibit 4
  - K-2: Exhibit 5
  - K-3: Exhibit 12
- L. Deposition transcript of Mark Thornburg for Henry County, including Exhibits 1 to 7, taken on February 12, 2007
- M. Deposition transcript of Rickey Miller, including Exhibits, taken on February 12, 2007.
- N. Letter from James R. Paschall, Senior General Attorney of Norfolk Southern Corporation to Kathleen C Kauffman, dated July 19, 2006.
- O. Email from Michael Scime to Larry Loveall, August 22, 2002.
- P. Honey Creek Railroad, Inc.—Acquisition and Operation Exemption—Line of Consolidated Rail Corporation. FD 32332, served September 20, 1993
- Q Consolidated Rail Corporation—Abandonment Exemption—in Henry and Madison Counties, IN. AB 167 (Sub No. 1122X), served December 21, 1993.

Dated this 18th day of June, 2007

I, Kathleen Clubb Kauffman, declare under penalty of perjury that the foregoing is true and accurate. Further, I certify that I am qualified and authorized to file this declaration.



Kathleen Clubb Kauffman



# EXHIBIT A

Send To Printer Back To TerraServer Change to 11x17 Print Size Show Grid Lines Change to Landscape

USGS 67 km E of Indianapolis, Indiana, United States 05 Apr 1998



0 2Km

0 1M

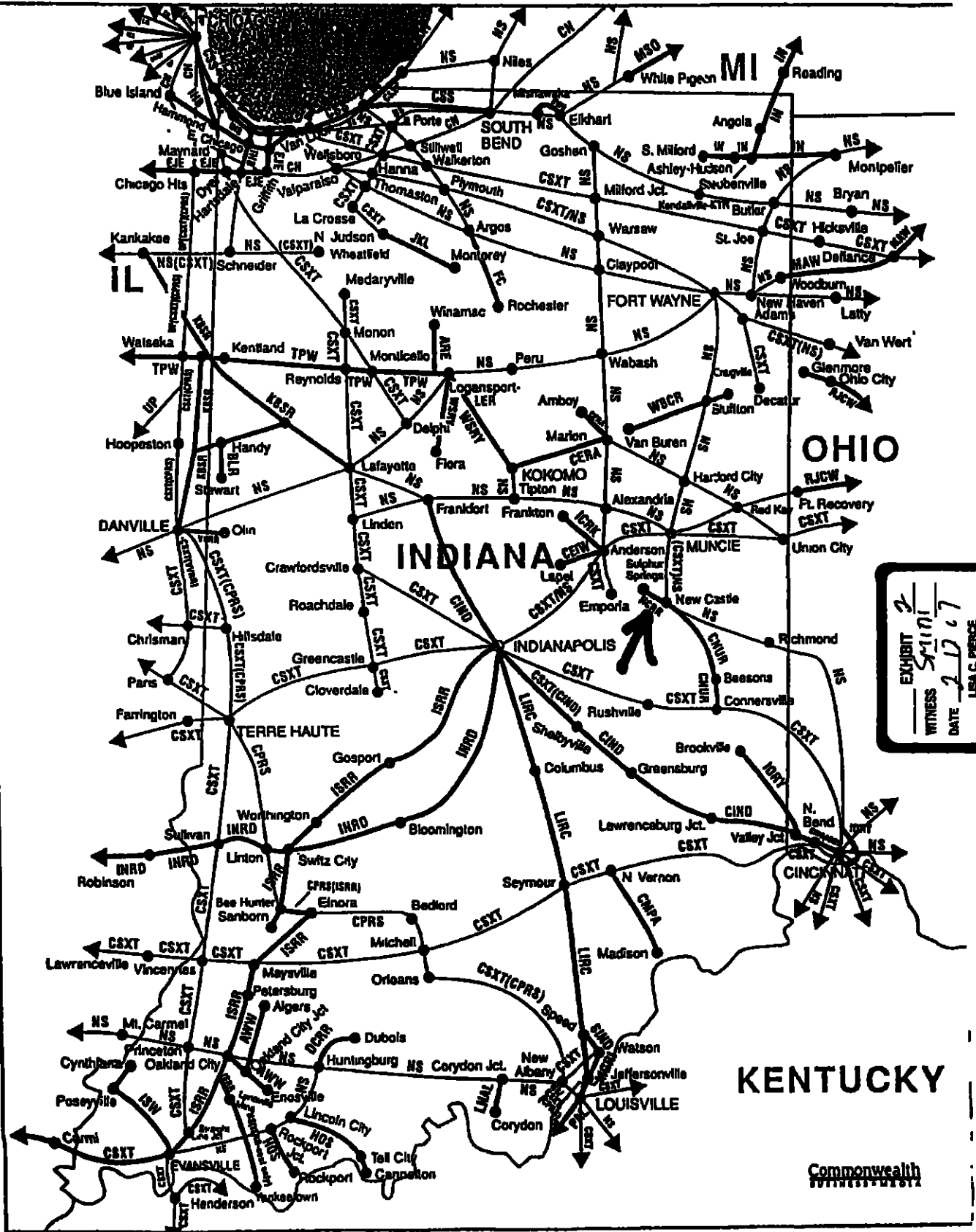
Image courtesy of the U.S. Geological Survey  
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EXHIBIT A

EXHIBIT	1
WITNESS	SHIRI
DATE	2-12-07
LISA C. PIERCE	

# EXHIBIT B

# REGION 14 IN



Commonwealth  
of Kentucky

# EXHIBIT C

Send To Printer Back To TerraServer Change to 11x17 Print Size Show Grid Lines Change to Landscape

USGS 67 km E of Indianapolis, Indiana, United States 01 Jul 1984

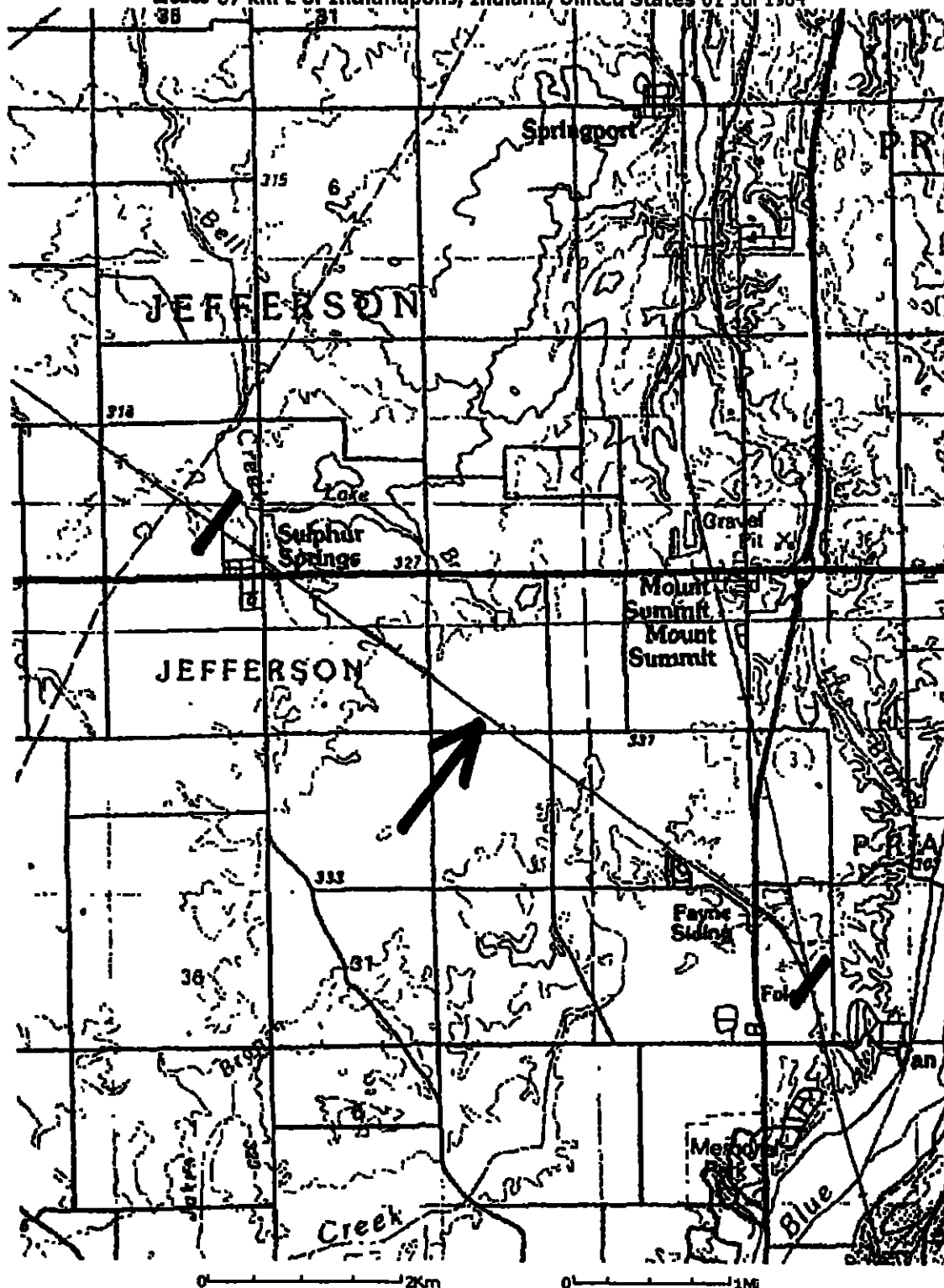


Image courtesy of the U.S. Geological Survey  
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EXHIBIT	3
WITNESS	SALIH
DATE	2-12-07
LISA C. PIERCE	

# EXHIBIT D

34964

SERVICE DATE - AUGUST 20, 2004

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No AB-865X]

Honey Creek Railroad, Inc –Abandonment Exemption–in Henry County, IN

The Honey Creek Railroad, Inc. (HCR) has filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon its entire approximately 5.9-mile line of railroad, between Sulphur Springs and New Castle, in Henry County, IN.<sup>1</sup> The line traverses United States Postal Service Zip Code 47362.

HCR has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

---

<sup>1</sup> HCR acquired the line in Honey Creek Railroad, Inc.–Acquisition and Operation Exemption–Line of Consolidated Rail Corporation, Finance Docket No. 32332 (ICC served Sept 20, 1993) There, it was specified that the line runs between Consolidated Rail Corporation's milepost 104.1 and milepost 110.05. HCR states that these designations were not utilized by it in connection with HCR's rail operations

Where, as here, the carrier is abandoning its entire line, the Board does not normally impose labor protection under 49 U.S.C. 10502(g), unless the evidence indicates the existence of: (1) a corporate affiliate that will continue substantially similar rail operations; or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. See Wellsville, Addison & Galetton R. Corp.—Abandonment, 354 I.C.C. 744 (1978); and Northampton and Bath R. Co.—Abandonment, 354 I.C.C. 784 (1978). Because HCR does not appear to have a corporate affiliate or parent that will continue similar operations or that could benefit from the proposed abandonment, employee protection conditions will not be imposed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 21, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>2</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>3</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 30, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be

---

<sup>2</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>3</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,100. See 49 CFR 1002.2(f)(25).

filed by September 9, 2004, with Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to the HCR's representative: Richard R. Wilson, 127 Lexington Avenue, Suite 100, Altoona, PA 16601.

If the verified notice contains false or misleading information, the exemption is void ab initio.

HCR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 27, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision

Pursuant to the provisions of 49 CFR 1152.29(e)(2), HCR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by HCR's filing of a

**notice of consummation by August 20, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.**

**Board decisions and notices are available on our website at  
“WWW.STB.DOT.GOV.”**

**Decided: August 16, 2004.**

**By the Board, David M. Konschnik, Director, Office of Proceedings.**

**Vernon A. Williams**

**Secretary**

# EXHIBIT E

**RICHARD R. WILSON, P.C.**

**Attorney at Law**

**A Professional Corporation**

**127 Lexington Avenue, Suite 100  
Altoona, PA 16601**

(814) 944-5302

(888) 454-3817 (Toll Free)

(814) 944-6978 FAX

rrwilson@atlanticbbs.net

851 Twelfth Street  
Oakmont, PA 15139

Of Counsel to:

Vuono & Gray LLC

2310 Grant Building  
Pittsburgh, PA 15219

(412) 471-1800

(412) 471-4477 FAX

June 7, 2006

ENTERED  
Office of Proceedings

Hon. Vernon A. Williams, Secretary  
Surface Transportation Board  
1925 K Street, NW  
Washington, DC 20423-0001

JUN 12 11 15

Part of  
Public Record

Re: Petition of Honey Creek Railroad, Inc. for Declaratory Order  
Finance Docket No. 34869

Dear Sir:

Enclosed for filing in the above captioned proceeding, please find the original and ten copies of Reply of Honey Creek Railroad, Inc. - to The Supplemental Petition of Respondent for Further Extensions of Time.

Please time stamp the additional copy of this letter and return it to the undersigned in the enclosed self addressed, stamped envelope. Copies of this Reply have been served on all parties of record.

Very truly yours,

RICHARD R WILSON, P.C.



Richard R. Wilson, Esq.

Attorney for Honey Creek Railroad Company

RRW/bab  
Enclosures

xc: Honey Creek Railroad, Inc.  
All Parties of Record

216738

Before the  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC .  
PETITION FOR DECLARATORY ORDER



**REPLY OF HONEY CREEK RAILROAD, INC. TO THE  
SUPPLEMENTAL PETITION OF RESPONDENT FOR FURTHER  
EXTENSIONS OF TIME**

ENTERED  
Office of Proceedings

Part of  
Public Record

RICHARD R. WILSON, ESQ.  
Attorney for Honey Creek Railroad, Inc.  
Pa. I.D. #25661  
127 Lexington Avenue, Suite 100  
Altoona, PA 16601  
(814) 944-5302  
(814) 944-6978 fax

Dated: June 7, 2006

Before the  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.  
PETITION FOR DECLARATORY ORDER

---

**REPLY OF HONEY CREEK RAILROAD, INC. TO THE  
SUPPLEMENTAL PETITION OF RESPONDENT FOR FURTHER  
EXTENSIONS OF TIME**

---

Honey Creek Railroad Company, Inc. ("HCR"), files this reply to the Supplemental Petition for Further Extension of Time submitted on behalf of Respondent on June 2, 2006. HCR has no objection to affording new counsel the professional courtesy of a 30 day extension of time in which to file a substantive reply to HCR's Petition for Declaratory Order, but it takes strong exception to a 30 day extension of time so that counsel can investigate facts and determine whether discovery will be necessary before filing a reply. This matter has been in litigation in the Indiana courts for over a year. The issue of referral to the Surface Transportation Board was before the Court for over six months before disposition and respondent and his local counsel were therefore clearly on notice of the possibility that referral to the STB might occur and yet they failed to take action to obtain assistance of regulatory counsel until after the Court granted referral and HCR filed its Petition for Declaratory Order with the Board. Thus delays in obtaining knowledgeable counsel or the adequacy of time for responding to HCR's Petition for Declaratory Order are entirely of respondents own making. His attempts to seek further delay of

the Board's consideration of HCR's Petition for Declaratory Order is therefore unwarranted and meritless.

The issue presented in HCR's Petition for Declaratory Order is a question of law concerning the application of the STB's abandonment regulations with regard to Indiana statutory provisions and does not present any disputed issues of fact. The HCR abandonment proceeding has been concluded with the exception of filing a notice of consummation which has been postponed with consent of the Board as a consequence of the pending state court litigation. Moreover, the evidentiary record in the HCR abandonment proceeding is closed but available on the STB's website. That record could have been reviewed by Mr. Roberts' local counsel at any time and can be reviewed by Mr. Roberts' new counsel with more than adequate time in which to file a reply to HCR's Petition for Declaratory Order within 30 days.

Moreover, respondent has already initiated discovery in the Indiana court proceeding where relevant facts concerning state property law issues can be ascertained after this referral is returned to the court. (Exhibit A)

Accordingly, HCR does not object to an additional 30 day extension within which respondent can file a reply to HCR's Petition for Declaratory Order. However, to string this proceeding out for 30 days to afford opposing counsel a period to investigate and then to determine whether further discovery (and delay) is necessary is an open ended, speculative abuse of the Board's procedures and is prejudicial to HCR's entitlement to a speedy administrative

determination of its Petition so that this case can be resubmitted to the Indiana court for final resolution.

Respectfully submitted,

RICHARD R. WILSON, P.C.

By

A handwritten signature in black ink, appearing to read "Richard R. Wilson", written over a horizontal line.

Richard R. Wilson, Esq.

Attorney for Honey Creek Railroad, Inc.

RICHARD R. WILSON, P.C.  
127 Lexington Avenue, Suite 100  
Altoona, PA 16601  
(814) 944-5302

LAW OFFICES  
KEATON AND KEATON, P.C.

126 WEST SECOND STREET  
RUSHVILLE INDIANA 46173-1874

WALTER B KEATON (1912-1980)  
WILLIAM B KEATON

TELEPHONE (765) 932-3947  
FAX (765) 938-2803

June 1, 2006

Honorable Jay L. Toney  
Special Judge, Henry Circuit Court  
Randolph Circuit Court  
Randolph County Court House  
100 South Main Street  
Winchester Indiana 47394

Honey Creek Railroad Inc.  
Gary L. Roberts, et al  
No. 33CO1-0506-CT-10019

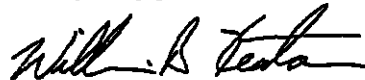
Dear Judge Toney

Enclosed please find your service copy of my Response To Motion To Shorten Time To Respond To Discovery regarding the above case.

Also enclosed please find the proposed Order Denying Motion To Shorten Time And Directing Compliance With Indiana Trial Rule 26 (A) along with sufficient copies for distribution

Thank you for your assistance in this matter

Very truly yours,



WBK ld

William B Keaton

cc Mr William E Smith  
Mr Richard R Wilson  
Mr John H Brooke  
Henry County Clerk

WordPerfect 8.0 users work HoneyCreekRRS/LrLD jun 01 pd

EXHIBIT A

THIS LETTER IS INTENDED FOR THE USE OF THE ADDRESSEE ONLY AND IS NOT INTENDED FOR  
THE BENEFIT OR RELIANCE UPON BY ANY OTHER PERSON OR ENTITY

STATE OF INDIANA            )     IN THE HENRY CIRCUIT COURT  
                                  )SS.  
COUNTY OF HENRY         )     CAUSE NO 33CO1-0506-CT-0019

HONEY CREEK RAILROAD, INC.                                 )  
An Indiana Corporation.   )  
                                  Plaintiff,                                 )  
                                  vs.   )  
GARY L. ROBERTS,   )  
Individually,   )  
   )  
ROBERTS PIPELINE CONSTRUCTION                                 )  
COMPANY, INC.   )  
An Indiana Corporation   )  
ROBERTS CONSTRUCTION INC   )  
An Indiana Corporation.   )  
                                  Defendants   )

GARY L. ROBERTS   )  
Individually   )  
                                  Counter-Claimant.                                 )  
                                  vs   )  
HONEY CREEK RAILROAD INC   )  
An Indiana Corporation.   )  
                                  Counter-Defendant   )

**RESPONSE TO MOTION TO SHORTEN**  
**TIME TO RESPOND TO DISCOVERY**

Comes now the plaintiff by counsel, William B. Keaton, and objects to the motion of the defendant, Gary L. Roberts, to shorten the time to respond to discovery

In support of this motion, the plaintiff would show the Court as follows

- 1     A Stay Order has been entered in this cause pending the determination of the Surface Transportation Board
- 2     The defendant, Gary L. Roberts, failed to comply with the provisions of Indiana Trial Rule 26(A) concerning the submission of discovery

WHEREFORE, the plaintiff prays the Court to deny the Motion To Shorten Time To Respond To Discovery and for all other relief proper in the premises

KEATON AND KEATON, P.C.

By William B. Keaton  
William B. Keaton, #5102-70  
Attorney for Plaintiff

KEATON AND KEATON, P.C.  
126 West Second Street  
Rushville, Indiana 46173  
Telephone (765)932-3947  
Fax (765)938-2803

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was personally served upon the person or persons listed below or was served by facsimile transmission and/or by United States Mail postage prepaid and addressed to the person or persons listed below

Mr John H Brooke  
Brooke & Mawhorr P C  
P O Box 1071  
Muncie Indiana 47306-1071

Mr Richard R Wilson  
Richard R Wilson, P C  
127 Lexington Avenue Suite 100  
Alloua Pennsylvania 16601

Honorable Jay L. Toney  
Special Judge Henry Circuit Court  
Randolph Circuit Court  
Court House  
100 South Main Street  
Winchester, Indiana 47394

Dated, June 1 2006

By William B. Keaton  
William B Keaton

LAW OFFICES  
**KEATON AND KEATON, P.C.**  
126 WEST SECOND STREET  
RUSHVILLE, INDIANA 46173-1874

WALTER B. KEATON (1912-1980)  
WILLIAM B. KEATON

TELEPHONE (765) 932-3947  
FAX (765) 936-2803

June 1, 2006

Ms. Patricia A. French  
Clerk, Henry Circuit Court  
P O Box B  
New Castle, Indiana 47362

Honey Creek Railroad, Inc. v  
Gary L. Roberts, et al  
No. 33CO1-0506-CT-0019

Dear Ms. French


Enclosed please find for filing with the Court on behalf of Honey Creek Railroad, Inc., my Response To Motion To Shorten Time To Respond To Discovery. Please note that this pleading were mailed pursuant to T.R. 5(F)(3) and should be file marked as the date of mailing.

The proposed Order Denying Motion To Shorten Time And Directing Compliance With Indiana Trial Rule 26 (A) has been forwarded to Special Judge Toney for his consideration.

Please return a file marked copy of this pleading to me in the enclosed reply envelope.

Thank you for your assistance in this matter.

Very truly yours,



William B. Keaton

WBK:ld

cc: Mr. William E. Smith  
Mr. Richard R. Wilson  
Mr. John H. Brooke  
Honorable Jay L. Toney

Certified Mail # 7160 3901 9848 4202 7979  
S:\WordPerfect\Folders\work\Honey-Creek-RR\CLL\LD jua.wpd

# BROOKE • MAWHORR

*Attorneys At Law*

John H. Brooke  
Douglas K. Mawhorr

Leslie M. Horn  
Rebecca S. Hartley

May 31, 2006

Clerk Henry Circuit Court  
P O Box 3  
New Castle, Indiana

Re Honey Creek Railroad, Inc  
v Gary L. Roberts, et al  
Henry Circuit Court I  
Cause No 33C01-0506-CT-0019

Dear Clerk:

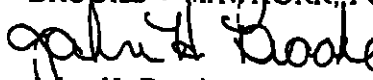
Please find enclosed one (1) original and four (4) copies of the following document with regard to the above-referenced matter to be filed in your court:

- 1 Defendant Gary Roberts Motion to Shorten Thirty Day Time Allowance for Submission of Plaintiff's Responses to Defendant's First Set of Interrogatories
- 2 Order on Motion to Shorten Thirty Day Time Allowance for Submission of Plaintiff's Responses to Defendant's First Set of Interrogatories, and
- 3 Defendant Gary Roberts First Set of Interrogatories to Plaintiff Honey Creek Railroad Inc

Upon filing, please return one (1) file-marked copy of this pleading. I have enclosed a self-addressed stamped envelope for your mailing convenience. As this is filed by certified mail, please show the filing date as the date of mailing, May 31, 2006, pursuant to Indiana Trial Rule 5 (E).

Thank you for your cooperation and assistance in this matter.

Sincerely,  
BROOKE • MAWHORR, PC

  
John H. Brooke  
Attorney At Law

JHB/llr  
Enclosures

STATE OF INDIANA            )     IN THE HENRY CIRCUIT COURT  
                                  )SS  
COUNTY OF HENRY         )     CAUSE NO 33C01-0506-CT-0019

HONEY CREEK RAILROAD, INC.,                                 )  
An Indiana Corporation.   )  
                                  Plaintiff                                 )  
                                  vs   )  
GARY L. ROBERTS.   )  
Individually.   )  
ROBERTS PIPELINE CONSTRUCTION                                 )  
COMPANY INC   )  
An Indiana Corporation   )  
ROBERTS CONSTRUCTION INC   )  
An Indiana Corporation   )  
                                  Defendants   )

GARY L ROBERTS   )  
Individually   )  
                                  Counter-Claimant                                 )  
                                  vs   )  
HONEY CREEK RAILROAD INC   )  
An Indiana Corporation   )

**DEFENDANT, GARY ROBERTS', FIRST SET OF INTERROGATORIES TO**  
**PLAINTIFF HONEY CREEK RAILROAD, INC**

Comes now the Defendant herein, Gary Roberts by counsel, John  
H Brooke BROOKE MAWHORR P.C and requests the Plaintiff herein  
to answer the following interrogatories under oath within thirty (30) days  
after service hereof pursuant to Trial Rule 33 It is further requested  
that Plaintiff supplement all responses as required by Trial Rule 26(E)  
Please number responses as the questions are numbered

Please note that Trial Rule 33(A) requires that the party to whom  
these interrogatories are directed furnish all information that is available  
to the party, and that each interrogatory be answered fully and upon

oath Trial Rule 37(A)(3) provides that an evasive or incomplete answer is to be treated as a failure to answer

In responding to these Interrogatories, furnish all information available to you, including information in the possession of your attorneys, or their investigators, and all persons acting in your behalf and not merely such information known of your own personal knowledge. If you cannot respond to discovery in full after exercising due diligence to secure the information answer to the extent possible, specifying your inability to answer the remainder and state whatever information or knowledge you have concerning the unanswered portions and the efforts you have undertaken to secure the information sought. If the space provided for your answer is inadequate please continue your answer on a separate sheet numbering the continuation to correspond with the Interrogatory you are answering.

The Interrogatories which follow are to be considered as continuing and you are requested to provide by way of supplementary answers and responses thereto such additional information as you or any other person acting in your behalf may hereafter obtain which will augment or otherwise modify the responses first given. Such supplementary responses are to be served upon the undersigned counsel within thirty (30) days after receipt of such information.

**INTERROGATORY NO. 1**

Please state the name, address, telephone number, and position of the person answering these interrogatories on behalf of the Plaintiff Honey Creek Railroad, Inc

**INTERROGATORY NO. 2**

Please state the date Honey Creek Railroad Inc was formed

**INTERROGATORY NO. 3**

Please state the date Honey Creek Railroad was purchased as well as the name of the former owner

**INTERROGATORY NO. 4**

Please state the dates of operation for Honey Creek Railroad, Inc, and the purpose for which the railroad was used

**INTERROGATORY NO. 5**

Has any portion of Honey Creek Railroad become unusable as a railroad on any portion of its line, other than that portion which is the subject of this law suit? If so, please identify those portions and the date upon which they became unusable

I HEREBY AFFIRM UNDER THE PENALTIES OF PERJURY THAT  
THE FOREGOING REPRESENTATIONS ARE TRUE AND ACCURATE

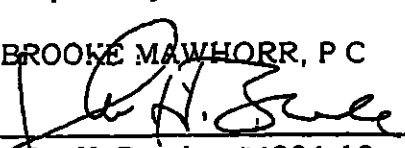
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

Respectfully submitted,

BROOKE MAWHORR, P C

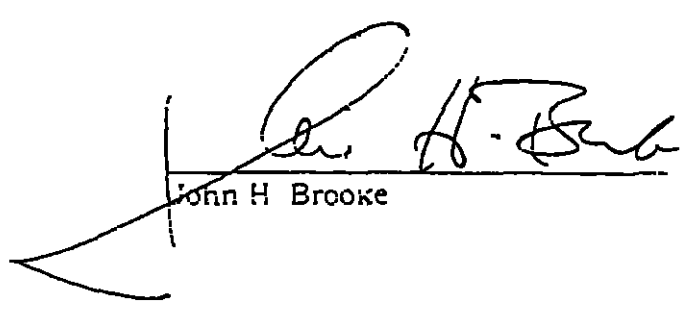
  
\_\_\_\_\_  
John H Brooke, #4234-18  
Attorney for Gary Roberts

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that a copy of the foregoing is being served via United States first-class mail, postage prepaid, this ~~25<sup>th</sup>~~ <sup>31<sup>st</sup></sup> day of May, 2006, to the following counsel of record

Richard Wilson  
127 Lexington Avenue, Suite 100  
Altoona, PA 16601

William Keaton  
126 West Second Street  
Rushville, IN 46173



John H Brooke

STATE OF INDIANA            )     IN THE HENRY CIRCUIT COURT  
                                  )SS  
COUNTY OF HENRY         )     CAUSE NO 33C01-0506-CT-0019

HONEY CREEK RAILROAD, INC ,                                 )  
An Indiana Corporation.   )  
                                  Plaintiff                                 )  
                                  vs   )  
GARY L ROBERTS.   )  
Individually   )  
ROBERTS PIPELINE CONSTRUCTION                                 )  
COMPANY, INC   )  
An Indiana Corporation   )  
ROBERTS CONSTRUCTION INC.   )  
An Indiana Corporation.   )  
                                  Defendants   )

GARY L ROBERTS   )  
Individually   )  
                                  Counter-Claimant.                                 )  
                                  vs   )  
HONEY CREEK RAILROAD INC   )  
An Indiana Corporation   )

**DEFENDANT GARY ROBERTS' MOTION TO SHORTEN THIRTY DAY  
TIME ALLOWANCE FOR SUBMISSION OF PLAINTIFF'S RESPONSES TO  
DEFENDANT'S FIRST SET OF INTERROGATORIES**

Comes now the Defendant herein, Gary Roberts by counsel John  
H Brooke BROOKE MAWHORR P C and files his Motion to Shorten  
Thirty-Day Time Allowance for Submission of Plaintiff's Responses to  
Defendant's First Set of Interrogatories pursuant to Indiana Trial Rule  
33 (C) In support of his motion he states and alleges as follows

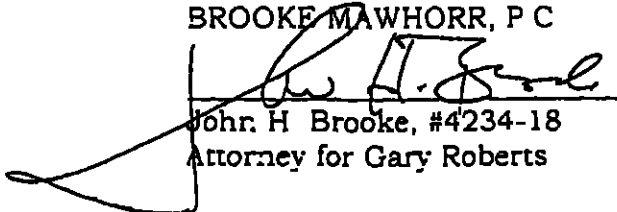
1     That Defendant's Response to the Petition for Declaratory Relief of  
Honey Creek Railroad, Inc , Surface Transportation Board Finance  
Docket Number 34869, is due to be filed on or before June 12,  
2006

2. That the information requested by Defendant's First Set of Interrogatories to Plaintiff, Honey Creek Railroad, Inc , (attached as Exhibit A) is imperative for Defendant to present a proper response to Plaintiff's Request for Declaratory Relief
- 3 That the information requested by Defendant's First Set of Interrogatories to Plaintiff is known to the Plaintiff and is readily available for Plaintiff to furnish to Defendant
- 4 That Defendant's Motion to Shorten the Thirty-Day Time Allowance does not create a hardship for Plaintiff, as this information is easily obtained by Plaintiff
- 5 That Defendant requests that the time allowance be reduced to seven (7) days from the date of service on Plaintiff in order for the information to be accessible to Defendant to aid in his Response to Plaintiff's Motion for Declaratory Relief

WHEREFORE Defendant requests that this Court grant its Motion to Shorten the Thirty-Day Time Allowance for Submission of Responses to Defendant's First Set of Interrogatories to seven (7) days from the date of service upon Plaintiff and all other relief just and proper in the premises

Respectfully submitted,

BROOKE MAWHORR, P C



John H Brooke, #4234-18  
Attorney for Gary Roberts

**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that a copy of the foregoing is being served via United States first-class mail, postage prepaid, this 25<sup>th</sup> day of May, 2006, to the following counsel of record <sup>3/5</sup>

Richard Wilson  
127 Lexington Avenue Suite 100  
Altoona, PA 16601

William Keaton  
126 West Second Street  
Rushville IN 46173



John H Brooke

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this 7<sup>th</sup> day of June, 2006 served a copy of the Reply of Honey Creek Railroad, Inc. to the Supplemental Petition of Respondent for Further Extensions of Time upon the following by first class United States Mail, postage prepaid:

William B. Keaton, Esq.  
KEATON AND KEATON, P.C.  
126 West Second Street  
Rushville, IN 46173

John H. Brooke, Esq.  
Brooke-Mawhorr Attorneys at Law  
P.O. Box 1071  
112 E. Gilbert Street  
Muncie, Indiana 47308-1071

Kathleen Clubb Kauffman  
Ackerson Kaufmann Fex, PC  
1250 H Street, NW  
Ste. 850  
Washington, DC 20005

A handwritten signature in black ink, appearing to read "Richard R. Wilson", is written over a horizontal line.

Richard R. Wilson, Esq.  
Attorney for Honey Creek Railroad, Inc.

# EXHIBIT F

Dear Taxpayers:

Enclosed is your spring tax statement to be used for payment due Friday, June 30, 2006. A copy of the original statement will be mailed at a later date. This will include your fall tax amount which will be due Friday, November 10, 2006. For your convenience, you may pay at the following banks with the statement that is enclosed. Ameriana Savings Bank, Citizens State Bank, Star Financial Bank, and First Merchants Bank. Payments may also be made at the Treasurer's office. Make your check or money order payable to "Henry County Treasurer".

Payment made by mail must be correctly addressed, have the correct postage and a Postal Service postmark on or before the due date that is printed on the statement. Postmark does not mean the date printed by a postage meter. When mailing tax statement, please include a self addressed, stamped envelope, so we can return your stamped paid receipt.

Checks must clear or the tax payment is void. A \$20 NSF check fee will be added to the amount due for each NSF check received.

Credit card payments may be made only at <http://www.henryco.net> or by calling 1-866-480-8568. There is a fee for using this service. Credit card checks will not be accepted in the Treasurer's office.

If your mortgage company is responsible for the payment of your taxes, please forward this statement intact, to them immediately.

We apologize for the delay.  
Henry County Treasurer's Office

Dec. of 2005 765-529-4404

101 S. Main St.

NewBelle 47362

Paid \$ 1714.54  
6-14-06  
Chk # 60957

Dear Taxpayers:

Enclosed is your spring tax statement to be used for payment due Friday, June 30, 2006. A copy of the original statement will be mailed at a later date. This will include your fall tax amount which will be due Friday, November 10, 2006. For your convenience, you may pay at the following banks with the statement that is enclosed. Ameriana Savings Bank, Citizens State Bank, Star Financial Bank, and First Merchants Bank. Payments may also be made at the Treasurer's office. Make your check or money order payable to "Henry County Treasurer".

Payment made by mail must be correctly addressed, have the correct postage and a Postal Service postmark on or before the due date that is printed on the statement. Postmark does not mean the date printed by a postage meter. When mailing tax statement, please include a self addressed, stamped envelope, so we can return your stamped paid receipt.

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If your mortgage company is responsible for the payment of your taxes, please forward this statement intact, to them immediately.

We apologize for the delay.  
Henry County Treasurer's Office

*Caust House*  
*1015 Main*

47362

*Paid*  
*\$246.52*  
*CEH 1944*  
*6-26-06*

765-529-4404

# Henry County, Indiana

Approved by State Board of Accounts for Henry County 2003

REAL PROPERTY

1st HALF 2005

06/30/2006

**PARCEL LOCATION.**

MORRISTOWN GRAIN CO  
PO BOX 645  
MORRISTOWN IN 46161

PARCEL ID: 029-01817-00

TAX DISTRICT: SULPHUR SPRINGS TOWN

OWNER NAME: MORRISTOWN GRAIN CO

CHECK # 180

LEGAL INFORMATION:  
S.W.S.W. 18-18-10 1.055 A. / (D-648-01817-00)

Gross Tax Rate	2.3917	Acres	1.055
Replacement Credit	0	Class	1
Effective Tax Rate	2.3917	Land Use Code	300

TAX VALUES		EXEMPTIONS		APPRaised VALUE		
Gross Taxes	287.02	Mortgage	0	Land	Improvement	Total
Replacement Credit	-72.04	Standard	0	12,000	0	12,000
Subtotal	214.98	Age	0			
		Other	0			
Homestead Reduction	0.00	TOTAL	0			
Current Net Taxes	214.98			SPECIAL ASSESSMENT		
Special Assessments	5.00			Profit and Description	Delinquent	Current
Special Assessment Adj.	0.00			64800-J H THOMPSON	0.00	6.00
Current Net Taxes & Assmts(YEAR)	219.98			<div style="text-align: center;"> <h2>PAID</h2> <p>June MAY 16 2006</p> <p>Debra G. Wacker HENRY COUNTY TREASURER</p> </div>		
Current Net Taxes & Assmts(HALF)	112.49	CURRENT TAX DISTRIBUTION				
Penalties	0.00	State	0.22			
Interest	0.00	Henry County	59.41			
Adjustments	0.00	Sulphur Springs Township F	2.17			
Delinquent General Taxes	0.00	Shenandoah Schools	120.62			
Delinquent Assessments	0.00	County Library	13.62			
		Sulphur Springs Corp	18.71			
		Tax Increment Credit Fund	0.23			
		Special Assessment	5.00			
FULL YEAR TOTAL	219.98	Total	219.98	Total	0.00	6.00
PAYMENTS						
OTHER CREDITS						
HALF YEAR DUE	112.49					
Tax Bill prepared on	06/06/06					

# Henry County, Indiana

Approved by State Board of Accounts for Henry County 2003

REAL PROPERTY

1st HALF 2005

06/30/2006

PARCEL LOCATION: 302 E MAIN ST

MORRISTOWN GRAIN CO  
PO BOX 648  
MORRISTOWN IN 46161

PARCEL ID: 028-01819-00

TAX DISTRICT: SULPHUR SPRINGS TOWN

OWNER NAME: MORRISTOWN GRAIN CO

CHECK # 182

LEGAL INFORMATION:  
W.S.W. 18-18-10 356 A. / (D-648-01819-00)

Gross Tax Rate	2.3917	Acres	.356
Replacement Credit	0	Class	1
Effective Tax Rate	2.3917	Land Use Code	390

TAX VALUES		EXEMPTIONS		APPRAISED VALUE		
Gross Taxes	3,995.94	Mortgage	0	Land	Improvement	Total
Replacement Credit	-1,003.88	Standard	0	7,100	160,100	167,200
Subtotal	2,995.28	Age	0			
		Other	0			
Homestead Reduction	0.00	TOTAL	0			
Current Net Taxes	2,995.28			SPECIAL ASSESSMENT		
Special Assessments	5.00			Property and Description		
Special Assessment Adj.	0.00			Delinquent		
Current Net Taxes & Assmts (YEAR)	3,000.28			Current		
Current Net Taxes & Assmts (HALF)	1,502.63	CURRENT TAX DISTRIBUTION		64800-J H THOMPSON		
Penalties	0.00	State	3.01	0.00		
Interest	0.00	Henry County	827.81	5.00		
Adjustments	0.00	Sulphur Springs Township F	30.18			
Delinquent General Taxes	0.00	Shenandoah Schools	1,680.54			
Delinquent Assessments	0.00	County Library	189.73			
		Sulphur Springs Corp	260.74			
		Tax Increment Credit Fund	3.25			
		Special Assessment	5.00			
		Total	2,995.28			
FULL YEAR TOTAL	3,000.28			PAID		
PAYMENTS				June		
OTHER CREDITS				16 2006		
HALF YEAR DUE	1,502.63			Debra G. W. K. HENRY COUNTY TREASURER		
Tax Bill prepared on	06/06/06					

# Henry County, Indiana

Approved by State Board of Accounts for Henry County 2003

REAL PROPERTY

1st HALF 2005

06/30/2006

**PARCEL LOCATION:**

HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH  
649 W FOSTER HEIGHTS RD  
RUSHVILLE IN 48173

**PARCEL ID:** 011-02212-30

**TAX DISTRICT:** PRAIRIE TOWNSHIP

**OWNER NAME:** HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH

**CHECK #** 885

**LEGAL INFORMATION:**  
N W & S W 34-18-10 5.04 AC

<b>Gross Tax Rate</b>	2.6407	<b>Acres</b>	5.04
<b>Replacement Credit</b>	0	<b>Class</b>	U
<b>Effective Tax Rate</b>	2.6407	<b>Land Use Code</b>	800
<b>TAX VALUES</b>		<b>EXEMPTIONS</b>	
Gross Taxes	153.15	Mortgage	0
Replacement Credit	-37.60	Standard	0
Subtotal	115.55	Age	0
		Other	0
Homestead Reduction	0.00	<b>TOTAL</b>	0
Current Net Taxes	115.55		
Special Assessments	0.00		
Special Assessment Adj.	0.00		
Current Net Taxes & Assmts (YEAR)	115.55		
Current Net Taxes & Assmts (HALF)	57.78		
Penalties	0.00		
Interest	0.00		
Adjustments	0.00		
Delinquent General Taxes	0.00		
Delinquent Assessments	0.00		
		<b>CURRENT TAX DISTRIBUTION</b>	
		State	0.11
		Henry County	28.93
		Prairie Township	3.98
		Blue River Schools	76.82
		County Library	6.63
		Tax Increment Credit Fund	0.11
		Special Assessment	0.00
<b>FULL YEAR TOTAL</b>		<b>Total</b>	115.55
<b>PAYMENTS</b>			
<b>OTHER CREDITS</b>			
<b>HALF YEAR DUE</b>			
Tax Bill prepared on 06/06/06			

57.79

Return this portion with payment

**APPRAISED VALUE**

Land	Improvement	Total
5,800	0	5,800

**SPECIAL ASSESSMENT**

Profit and Description	Delinquent	Current
<b>PAID</b>		
<b>JUN 27 2006</b>		
Total	0.00	0.00

Debra G. Wacker  
HENRY COUNTY TREASURER

# Henry County, Indiana

Approved by State Board of Accounts for Henry County 2003

REAL PROPERTY

1st HALF 2005

06/30/2006

**PARCEL LOCATION:**

HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH  
848 W FOSTER HEIGHTS RD  
RUSHVILLE IN 46173

**PARCEL ID:** 029-01836-00

**TAX DISTRICT:** SULPHUR SPRINGS TOWN

**OWNER NAME:** HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH

**CHECK #** 120

**LEGAL INFORMATION:**  
S W 18-18-10 1.17 AC

<b>Gross Tax Rate</b>	2.3917	<b>Acres</b>	1.17
<b>Replacement Credit</b>	0	<b>Class</b>	U
<b>Effective Tax Rate</b>	2.3917	<b>Land Use Code</b>	800
<b>TAX VALUES</b>		<b>EXEMPTIONS</b>	
Gross Taxes	33.90	Mortgage	0
Replacement Credit	-8.42	Standard	0
Subtotal	25.08	Age	0
		Other	0
Homestead Reduction	0.00	TOTAL	0
Current Net Taxes	25.08		
Special Assessments	0.00		
Special Assessment Adj.	0.00		
Current Net Taxes & Assmts(YEAR)	25.08		
Current Net Taxes & Assmts(HALF)	12.54		
		<b>CURRENT TAX DISTRIBUTION</b>	
Penalties	0.00	State	0.03
Interest	0.00	Henry County	8.93
Adjustments	0.00	Sulphur Springs Township F	0.25
Delinquent General Taxes	0.00	Shenandoah Schools	14.07
Delinquent Assessments	0.00	County Library	1.69
		Sulphur Springs Corp	2.18
		Tax Increment Credit Fund	0.03
		Special Assessment	0.00
<b>FULL YEAR TOTAL</b>	25.08	<b>Total</b>	25.08
<b>PAYMENTS</b>			
<b>OTHER CREDITS</b>			
<b>HALF YEAR DUE</b>	12.54		
Tax Bill prepared on 06/06/06			

**PAID**

**JUN 27 2006**

Debra G. Wacker  
HENRY COUNTY TREASURER

# Henry County, Indiana

Approved by State Board of Accounts for Henry County 2003

REAL PROPERTY

1st HALF 2005

06/30/2006

**PARCEL LOCATION:**

HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH  
640 W FOSTER HEIGHTS RD  
RUSHVILLE IN 46173

PARCEL ID: 029-00557-00

TAX DISTRICT: SULPHUR SPRINGS TOWN

OWNER NAME: HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH

CHECK # 119

LEGAL INFORMATION:  
S W 13-18-9 .023 AC

Gross Tax Rate	2.3917	Acres	.023
Replacement Credit	0	Class	U
Effective Tax Rate	2.3917	Land Use Code	800
<b>TAX VALUES</b>		<b>EXEMPTIONS</b>	
Gross Taxes	5.60	Mortgage	0
Replacement Credit	-0.60	Standard	0
Subtotal	5.00	Age	0
		Other	0
Homestead Reduction	0.00	TOTAL	0
Current Net Taxes	5.00		
Special Assessments	0.00		
Special Assessment Adj.	0.00		
Current Net Taxes & Assmts (YEAR)	5.00		
Current Net Taxes & Assmts (HALF)	5.00		
Penalties	0.00		
Interest	0.00		
Adjustments	0.00		
Delinquent General Taxes	0.00		
Delinquent Assessments	0.00		
		<b>CURRENT TAX DISTRIBUTION</b>	
		State	0.01
		Henry County	1.38
		Sulphur Springs Township F	0.05
		Shenandoah Schools	2.81
		County Library	0.32
		Sulphur Springs Corp	0.44
		Tax Increment Credit Fund	-0.01
		Special Assessment	0.00
		Total	10.00
<b>FULL YEAR TOTAL</b>			
5.00			
<b>PAYMENTS</b>			
<b>OTHER CREDITS</b>			
<b>HALF YEAR DUE</b>			
Tax prepared on 06/09/06			
5.00			

<b>APPRaised VALUE</b>		
Land	Improvement	Total
100	0	100
<b>SPECIAL ASSESSMENT</b>		
Project and Description	Delinquent	Current
PAID		
Total	0.00	0.00
JUN 27 2006		
Debra G. Wacker HENRY COUNTY TREASURER		

# Henry County, Indiana

Approved by State Board of Accounts for Henry County 2003

REAL PROPERTY

1st HALF 2005

06/30/2006

**PARCEL LOCATION:**

HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH  
946 W FOSTER HEIGHTS RD  
RUSHVILLE IN 46173

PARCEL ID: 011-02139-00

TAX DISTRICT: PRAIRIE TOWNSHIP

OWNER NAME: HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH

CHECK # 884

LEGAL INFORMATION:  
N E 33-18-10 2.43 AC

Gross Tax Rate	2.6407	Acres	2.43
Replacement Credit	0	Class	U
Effective Tax Rate	2.6407	Land Use Code	800

TAX VALUES		EXEMPTIONS		APPRAISED VALUE		
Gross Taxes	73.94	Mortgage	0	Land	Improvement	Total
Replacement Credit	-18.18	Standard	0	2,800	0	2,800
Subtotal	55.76	Age	0			
		Other	0			
Homestead Reduction	0.00	TOTAL	0			
Current Net Taxes	55.76			SPECIAL ASSESSMENT		
Special Assessments	0.00			Profit and Description	Delinquent	Current
Special Assessment Adj.	0.00					
Current Net Taxes & Amts (YEAR)	55.76					
Current Net Taxes & Amts (HALF)	27.88	CURRENT TAX DISTRIBUTION				
Penalties	0.00	State	0.05	<div style="text-align: center; font-size: 2em; font-weight: bold;">PAID</div> <div style="text-align: center; font-weight: bold;">JUN 27 2006</div> <div style="text-align: center; margin-top: 10px;"> <i>Debra G. Wooten</i>              HENRY COUNTY TREASURER           </div>		
Interest	0.00	Henry County	13.96			
Adjustments	0.00	Prairie Township	1.32			
Delinquent General Taxes	0.00	Blue River Schools	38.59			
Delinquent Assessments	0.00	County Library	3.20			
		Tax Increment Credit Fund	0.06			
		Special Assessment	0.00			
FULL YEAR TOTAL	55.76	Total	238.70	Total	0.00	0.00
PAYMENTS						
OTHER CREDITS						
HALF YEAR DUE	27.88					
TaxBill prepared on	06/06/06					

Return this portion with payment

**Approved by State Board of Accounts for Henry County 2003**

08/30/2006

**HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH  
649 W FOSTER HEIGHTS RD  
RUSHVILLE IN 46173**

Gross Tax Rate	2.6407	Acres	9.03
Replacement Credit	0	Class	U
Effective Tax Rate	2.6407	Land Use Code	800
<b>TAX VALUES</b>		<b>EXEMPTIONS</b>	
Gross Taxes	303.66	Mortgage	0
Replacement Credit	-74.56	Standard	0
Subtotal	229.10	Age	0
		Other	0
Homestead Reduction	0.00	TOTAL	0
Current Net Taxes	229.10		
Special Assessments	0.00		
Special Assessment Adj.	0.00		
Current Net Taxes & Assmts (YEAR)	229.10		
Current Net Taxes & Assmts (HALF)	114.55	<b>CURRENT TAX DISTRIBUTION</b>	
Penalties	0.00	State	0.21
Interest	0.00	Henry County	57.35
Adjustments	0.00	Prairie Township	7.69
Delinquent General Taxes	0.00	Blue River Schools	150.29
Delinquent Assessments	0.00	County Library	13.14
		Tax Increment Credit Fund	0.22
		Special Assessment	0.00
<b>FULL YEAR TOTAL</b>	229.10		
<b>PAYMENTS</b>			
<b>OTHER CREDITS</b>			
<b>HALF YEAR DUE</b>	114.55	Total	412.26
Tax Bill prepared on 06/08/08			

**Return this portion with payment**

# Henry County, Indiana

Approved by State Board of Accounts for Henry County 2003

REAL PROPERTY

1st HALF 2005

06/30/2006

PARCEL LOCATION:

MORRISTOWN GRAM CO  
PO BOX 648  
MORRISTOWN IN 46161

PARCEL ID: 029-01818-00

TAX DISTRICT: SULPHUR SPRINGS TOWN

OWNER NAME: MORRISTOWN GRAM CO

CHECK # 181

LEGAL INFORMATION:  
IN W.S.W. 18-18-10 .88 A. / (D)

TAX VALUES		EXEMPTIONS		APPRAISED VALUE		
Gross Tax Rate	2.3817	Acres	.98	Land	Improvement	Total
Replacement Credit	0	Class	1			
Effective Tax Rate	2.3817	Land Use Code	300	11,100	0	11,100
Gross Taxes	285.48	Mortgage	0			
Replacement Credit	-86.84	Standard	0			
Subtotal	198.64	Age	0			
		Other	0			
Homestead Reduction	0.00	TOTAL	0			
Current Net Taxes	198.64					
Special Assessments	0.00					
Special Assessment Adj.	0.00					
Current Net Taxes & Assmts (YEAR)	198.64					
Current Net Taxes & Assmts (HALF)	99.32					
Penalties	0.00	CURRENT TAX DISTRIBUTION				
Interest	0.00	State	0.20			
Adjustments	0.00	Henry County	54.85			
Delinquent General Taxes	0.00	Sulphur Springs Township F	2.00			
Delinquent Assessments	0.00	Sherandoah Schools	111.88			
		County Library	12.80			
		Sulphur Springs Corp	17.31			
		Tax Incremental Credit Fund	0.22			
		Special Assessment	0.00			
FULL YEAR TOTAL	198.64	Total	203.84			
PAYMENTS						
OTHER CREDITS						
HALF YEAR DUE	99.32					
Tax Bill prepared on	08/08/06					

PAID

June 16 2006

Debra G. Wacker  
HENRY COUNTY TREASURER



**Before the  
SURFACE TRANSPORTATION BOARD**

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**FINANCE DOCKET NO: 34869**

**HONEY CREEK RAILROAD, INC.  
PETITION FOR DECLARATORY ORDER**

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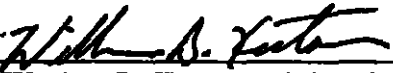
**HONEY CREEK RAILROAD, INC.'S RESPONSE  
TO ROBERTS' REQUEST FOR PRODUCTION OF  
HONEY CREEK RAILROAD, INC.**

Comes now William B. Keaton, attorney for William E. Smith, and for Honey Creek Railroad, Inc.'s Response To Roberts' Request For Production Of Documents To Honey Creek Railroad, Inc. says as follows:

1. None.
2. See all STB decisions in Abandonment Docket # AB 865-0; the Indiana statutes relating to this issues in this matter, and tax payment records attached.
3. None.
4. HCR objects to this request because it is ambiguous and vague. It also appears to request matters which may be protected by attorney-client privilege. Without waiving our objections, HCR makes the responds as follows: See all STB decisions in Abandonment Docket # AB 865-0; the Indiana statutes relating to this issues in this matter, and tax payment records attached.

5. HCR objects to this request for the reason it requests documents which, if they exist, are protected by the attorney-client privilege.
6. None other than those produced by the Indiana Department of Transportation.
7. Copies have not been retained by HCR.
8. Copies have not been retained by HCR.
9. The only shipper is Morristown Grain Company, Incorporated, and William E Smith is the sole shareholder.
10. None.
11. See all STB decisions in Abandonment Docket # AB 865-0.
12. None.
13. None.
14. HCR objects to this request for the reasons that it is overly broad, and it seeks documents which are totally irrelevant to the issues of abandonment. Without waiving said objection, see the attached tax documents.

KEATON AND KEATON, P.C.

By   
William B Keaton, #5102-70  
Attorney for Honey Creek Railroad, Inc.

KEATON AND KEATON, P.C.  
126 West Second Street  
Rushville, Indiana 46173  
Telephone: (765)932-3947  
Fax: (765)938-2803

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing pleading was personally served upon the person or persons listed below or was served by facsimile transmission and/or by United States Mail, postage prepaid and addressed to the person or persons listed below:

John H. Brooke, Esq.  
Brooke & Mawhorr, P.C.  
P. O. Box 1071  
Muncie, Indiana 47308-1071

Kathleen C. Kauffman  
Ackerson, Kauffman, Fex, PC  
1250 H. Street, NW, Suite 850  
Washington, DC 20005

Richard R. Wilson, Esq.  
127 Lexington Avenue, Suite 100  
Altoona, PA 16601

Dated: Sept. 13, 2006

By William B. Keaton  
William B. Keaton

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**Before the  
SURFACE TRANSPORTATION BOARD**

---

**FINANCE DOCKET NO: 34869**

**HONEY CREEK RAILROAD, INC.  
PETITION FOR DECLARATORY ORDER**

---

**ROBERTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO  
HONEY CREEK RAILROAD, INC.**

**Kathleen C. Kauffman (DC Bar # 323212)  
ACKERSON KAUFFMAN FEX, PC  
1250 H Street, NW, Suite 850  
Washington, DC 20005  
Tel: (202) 833-8833  
Fax: (202) 833-8831  
kauffman@ackersonlaw.com**

***Attorney for Gary L. Roberts,  
Roberts Pipeline Construction Company, Inc.,  
and Roberts Construction, Inc.***

**Dated: July 18, 2006**

Before the  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC  
PETITION FOR DECLARATORY ORDER

---

**ROBERTS' REQUEST FOR PRODUCTION OF DOCUMENTS TO  
HONEY CREEK RAILROAD, INC.**

---

PLEASE TAKE NOTICE that pursuant to 49 C.F.R. § 1114.30, Gary L. Roberts, Roberts Pipeline Construction Company, Inc., and Roberts Construction, Inc. ("Roberts"), by counsel, submits the following requests for production of documents and requests that Honey Creek Railroad, Inc. ("HCR") produce copies of all requested documents, and a privilege log identifying all withheld documents, by August 10, 2006 to Roberts' counsel at the law office of BROOKE MAWHORR, 112 E. Gilbert Street, Muncie, IN 47308 (or such other date, time and/or place as the parties may agree).

**INSTRUCTIONS AND DEFINITIONS**

1. You are required to provide all responsive information in your possession, custody, or control from all sources. Information may be within your control although it is in the possession or custody of a related entity or of a third party, such as an agent, attorney, consultant, accountant or other person retained by you.
2. You are instructed not to destroy, dispose of, erase, or "overwrite," any documents, materials, or other tangible or intangible things identified in response to these Requests, including without limitation information stored on computers or other electronic media.

3. If, in response to a request for production of documents, you withhold any document under a claim of privilege, please furnish a list that identifies each document for which such privilege is claimed, and as to each document state the following:

- A. The name of the sender of the document;
- B. The name of the author of the document;
- C. The name of the person(s) to whom the original and/or copy was sent;
- D. A description of the nature and subject matter of the document and any attachments thereto,
- E. The number of pages contained in the document and in any attachments thereto;
- F. The date of the document and the date(s) of any attachments thereto;
- G. The current custodian of the document; and
- H. The basis of your claim of privilege.

4. "You" and "HCR" mean Honey Creek Railroad, Inc., and shall include any predecessors-in-interest, present or former subsidiaries, affiliates, partners, beneficiaries, officers, directors, employees, agents, servants, representatives, and/or other persons acting or purporting to act on its behalf, including without limitation any attorney, accountant, or other person or consultant employed or retained by HCR.

5. "HCR line" means the 5.9-mile line of railroad, between Sulphur Springs and New Castle, in Henry County, Indiana, which transverses United States Postal Service Zip Code 47362. Until 1993, the HCR line was owned by Consolidated Rail Corporation and was identified as the line between milepost 104.1 and milepost 110.5. The HCR line is the subject of Surface Transportation Board ("STB") Docket No. AB-865 (Sub. No. 0 (or 1) X ) and the

subject of STB Finance Docket No. 34869.

6. "Document" shall be afforded the broadest meaning possible under the applicable rules and law. It shall include, without limitation, each original and each non-identical copy (whether different from the original by means of notes made on such copy or otherwise) of all forms of retained information. "Document" also includes, without limitation, all data, documents or information stored on computer or other device for the storage of electronic information; all electronic communications or messages, such as e-mail, including without limitation e-mail messages which have been printed out, e-mail messages which are stored on computers of the sender or recipient, and e-mail messages which have been "deleted" by the sender or recipient but which may be "recovered" from any source (including personal or network computers, mainframe computers, or computer back-up media).

7. "Concern", "concerning", "refers", "referring", "relates", "relating to" or "regarding" shall mean mentioning, reflecting, pertaining to, making reference to, evidencing, describing, discussing, analyzing, or commenting on a matter, directly or indirectly, in whole or in part.

8. "And" and "or" have both conjunctive and disjunctive meanings as required by the context to elicit all information discoverable within the broadest scope of these requests.

9. "Any" and "all" shall mean "each and every."

#### **ROBERTS' REQUESTS FOR PRODUCTION**

1. Please produce all documents identified in HCR's Responses to Roberts' Interrogatories.

2. Please produce all documents that you believe refutes, supports, or otherwise relates to Roberts' contention that the HCR line, in whole or in part, was abandoned either before

August 2004, before March 2006, or is abandoned today.

3. Please produce all documents showing or referring to sales, licenses, leases, easements, condemnations, or other property transfers by you involving the right of way on the HCR line.

4. Please produce all documents discussing or referring to the abandonment of the HCR line, including, without limitation, the consequences of abandonment for the property rights of landowners abutting or underlying the HCR line.

5. Please produce all documents discussing or referring to your decision to file for *de jure* abandonment authority for the HCR line when you filed for authority and all documents discussing or referring to the decision to not file for *de jure* abandonment authority prior to that time.

6. Please produce all documents constituting, discussing or referring to communications (oral, written, or electronic) with the Indiana Department of Transportation concerning (or reporting on) the HCR line, including, without limitation, documents discussing or referring to loans for the HCR line, HCR's operating rule books and any amendments, HCR's operating timetables and any amendments, HCR's submission of bulletin orders and notices, all verified petitions to remove automatic train-activated warning signals from rail-highway grade crossings, documents otherwise discussing removal of automatic train-activated warning signals on the HCR line, and the paving over of tracks at State Road 36 in Henry County.

7. Please produce all documents discussing or referring to your maintenance of the right of way underlying the HCR line.

8. Please produce all documents discussing or referring to your maintenance of tracks on the HCR line and/or the condition of tracks on the HCR line, including without

limitation, all documents related to accidents caused by the condition of the tracks on the HCR line, all documents related to removal of tracks or ties on the HCR line by you or by others, and the paving over of the HCR line by you or by others.

9. Please produce all documents discussing or referring to the names of all shippers who used the HCR line other than shippers owned or controlled by William E. Smith.

10. Please produce all documents discussing or referring to the last date of use of the HCR line.

11. Please produce all documents constituting, discussing, or referring to communications with the U.S. Environmental Protection Agency, Region 5, in connection with the *de jure* abandonment of the HCR line.

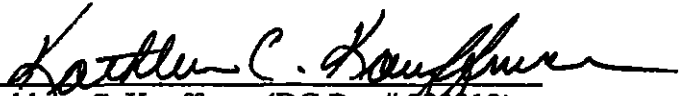
12. Please produce all documents discussing or referring to the status of the HCR line as a spur or industrial track.

13. Please produce all documents discussing, referring or relating to the existence of, or the elimination of, any and all connections between the HCR line and the interstate rail system.

14. Please produce all documents discussing, listing, or referring to HCR's property assets, including, without limitation, business plans, asset statements, tax returns, property tax statements, balance sheets, bank correspondence, and bank applications.

Dated: July 18, 2006

Respectfully submitted,



Kathleen C. Kauffman (DC Bar #322212)

ACKERSON KAUFFMAN FEX, PC

1250 H Street, N.W., Suite 850

Washington, D.C. 20005

(202) 833-8833

(202) 833-8831 (facsimile)

kauffman@ackersonlaw.com

John H. Brooke, Esq.

Rebecca Hartley, Esq.

BROOKE-MAWIIORR ATTORNEYS AT LAW

P.O. Box

112 E. Gilbert Street

Muncie, IN 47308-1071

(765) 741-1375

(765) 288-7763

*Counsel for Gary L. Roberts,  
Roberts Pipeline Construction Company, Inc.,  
and Roberts Construction, Inc*

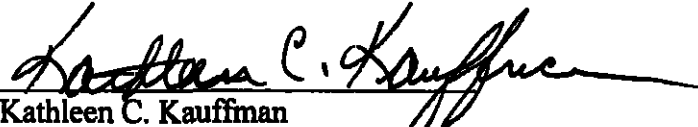
**CERTIFICATE OF SERVICE**

I hereby certify that I have this 18th day of July, 2006 served a copy of the Roberts' Request for Production of Documents to Honey Creek Railroad, Inc. upon the following via facsimile and first class mail:

Richard R. Wilson, Esq.  
Pa. I.D. #25661  
127 Lexington Avenue, Suite 100  
Altoona, PA 16601  
Fax: (814) 944-6978

William B. Keaton, Esq.  
KEATON AND KEATON, P.C.  
126 West Second Street  
Rushville, IN 46173  
Fax: (765) 938-2803

John H. Brooke, Esq.  
BROOKE-MAWHORR ATTORNEYS AT LAW  
P.O. Box  
112 E. Gilbert Street  
Muncie, IN 47308-1071  
Fax: (765) 288-7763

  
Kathleen C. Kauffman  
Attorney for Gary L. Roberts, et al.

# EXHIBIT G

Before the  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO: 34869

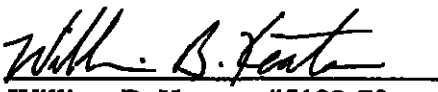
HONEY CREEK RAILROAD, INC  
PETITION FOR DECLARATORY ORDER

---

**HONEY CREEK RAILROAD, INC.'S RESPONSE  
TO ROBERTS' INTERROGATORIES TO  
HONEY CREEK RAILROAD, INC.**

Comes now William B Keaton, attorney for William E. Smith, and attaches Honey  
Creek Railroad, Inc.'s Response To Roberts' Interrogatories To Honey Creek Railroad, Inc.

KEATON AND KEATON, P.C.

By   
William B. Keaton, #5102-70  
Attorney for Honey Creek Railroad, Inc.

KEATON AND KEATON, P.C.  
126 West Second Street  
Rushville, Indiana 46173  
Telephone: (765)932-3947  
Fax: (765)938-2803

computers of the sender or recipient, and e-mail messages which have been "deleted" by the sender or recipient but which may be "recovered" from any source (including personal or network computers, mainframe computers, or computer back-up media).

7. "Concern", "concerning", "refers", "referring", "relates", "relating to" or "regarding" shall mean mentioning, reflecting, pertaining to, making reference to, evidencing, describing, discussing, analyzing, or commenting on a matter, directly or indirectly, in whole or in part.

8. "And" and "or" have both conjunctive and disjunctive meanings as required by the context to elicit all information discoverable within the broadest scope of these requests.

9. "Any" and "all" shall mean "each and every."

#### **INTERROGATORIES**

1. Please identify by date and activity all track maintenance you performed on the HCR line from 1998 to the present. I did not keep a record of maintenance.

2. Please identify by date and activity all right of way maintenance you performed on the HCR line from 1998 to the present. I did not keep a record of maintenance.

3. Please identify by date and name all shipments on the HCR line by shippers other than entities owned or controlled by HCR, William E. Smith or any other officer of HCR. None.

4. Please identify by date and name of shipper the last time the HCR line was used for rail traffic. December 1999. Morristown Grain Company, Inc.

5. Please identify by date, location, and name of entity removing or paving over rails, all instances where the rails on the HCR line have been removed or paved over. Unknown.

6. Please identify by date, location and transferee, all transfers of property interests in the right of way underlying the HCR line by HCR to another party. None.

7. Please identify by location, nature of connection, and railroad all connections between the HCR line and the interstate rail system that existed in 1993. Conrail - New Castle, IN

8. Please identify by location, nature of connection, and railroad all connections between the HCR line and the interstate rail system that existed in August 2004. None. The switch was removed by Norfolk Southern.

9. Please identify by location, nature of connection, and railroad all connections between the HCR line and the interstate rail system that exist today. None.

10. Please describe by date and action all steps you took to comply with the STB's September 20, 2004, conditions for *de jure* abandonment. See attached.

11. If since 1993, you have maintained, built or received revenue from any building(s), loading platform(s), agent(s), station(s), or telegraph, telephone and/or fiber-optic line(s) alongside, above, beneath, or on the HCR Line, please identify for each item: None.

a. The item;

b. The period of time for which Honey Creek maintained, built or received revenue from the items; and

c. The amount of revenue Honey Creek received from the item, if any.

12. Please state whether you have maintained any schedules regarding shipments of train traffic on the HCR line and whether these schedules remain in your possession. No.

13. If you have been subject to any state, municipal, or local regulatory entity regarding the HCR Line, please provide the following: None.

a. The name of the state, municipal, or local regulatory entity.

b. The grounds on which the state, municipal, or local entity based its jurisdiction over the you with respect to the HCR line.

• **Honey Creek Railroad, Inc. v. Roberts**

- 10 Honey Creek Railroad, Inc. agreed to the imposition of a notice of interim trail use but did not enter into any agreement with the Indiana Trails Fund, Inc. for the sale of the railroad right of way for recreational trail purposes and the notice has expired.**

I AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FOREGOING  
STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND  
BELIEF.

Dated: Sept. 12, 2006

William E. Smith Pres.  
William E. Smith, President  
Honey Creek Railroad, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing pleading was personally served upon the person or persons listed below or was served by facsimile transmission and/or by United States Mail, postage prepaid and addressed to the person or persons listed below:

John H. Brooke, Esq.  
Brooke & Mawhorr, P.C.  
P. O. Box 1071  
Muncie, Indiana 47308-1071

Kathleen C. Kauffman  
Ackerson, Kauffman, Fex, PC  
1250 H. Street, NW, Suite 850  
Washington, DC 20005

Richard R. Wilson, Esq.  
127 Lexington Avenue, Suite 100  
Altoona, PA 16601

Dated: Sept. 13, 2006

By   
William B. Keaton

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Before the  
SURFACE TRANSPORTATION BOARD

---

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC.  
PETITION FOR DECLARATORY ORDER

---

**ROBERTS' INTERROGATORIES TO HONEY CREEK RAILROAD, INC.**

Kathleen C. Kauffman (DC Bar # 323212)  
ACKERSON KAUFFMAN FEX, PC  
1250 H Street, NW, Suite 850  
Washington, DC 20005  
Tel: (202) 833-8833  
Fax: (202) 833-8831  
kauffman@ackersonlaw.com

*Attorney for Gary L. Roberts,  
Roberts Pipeline Construction Company, Inc.,  
and Roberts Construction, Inc*

Dated: July 18, 2006

**Before the  
SURFACE TRANSPORTATION BOARD**

---

**FINANCE DOCKET NO: 34869**

**HONEY CREEK RAILROAD, INC.  
PETITION FOR DECLARATORY ORDER**

---

**ROBERTS' INTERROGATORIES TO HONEY CREEK RAILROAD, INC.**

---

PLEASE TAKE NOTICE that pursuant to 49 C.F.R. § 1114.26, Gary L. Roberts, Roberts Pipeline Construction Company, Inc., and Roberts Construction, Inc. ("Roberts"), by counsel, requests that Honey Creek Railroad, Inc., ("HCR") answer the following interrogatories separately, fully and in writing, by August 10, 2006.

**INSTRUCTIONS AND DEFINITIONS**

1. You are required to provide all responsive information in your possession, custody, or control from all sources. Information may be within your control although it is in the possession or custody of a related entity or of a third party, such as an agent, attorney, consultant, accountant or other person retained by you.

2. If, in lieu of answering an Interrogatory, you decide to produce responsive documents from which Roberts may ascertain the requested information, the documents shall be produced in accordance with the definitions and instructions applicable to document production set forth in Roberts' Request for Production of Documents to Honey Creek Railroad Inc., and shall be identified as responsive to the Interrogatory for which they are being supplied.

3. If you believe than any Interrogatory calls for information which is subject to the attorney-client privilege or any other privilege or discovery immunity, answer so much of the Interrogatory as is not objected to, and then for each item of information as to which the claim of privilege or immunity is asserted, identify the type, format, and subject matter of the item sufficient to assess whether the assertion of privilege is valid

4. "You" and "HCR" mean Honey Creek Railroad, Inc., and shall include any predecessors-in-interest, present or former subsidiaries, affiliates, partners, beneficiaries, officers, directors, employecs, agents, servants, representatives, and/or other persons acting or purporting to act on its behalf, including without limitation any attorney, accountant, or other person or consultant employed or retained by HCR.

5. "HCR line" means the 5.9-mile line of railroad, between Sulphur Springs and New Castle, in Henry County, Indiana, which transverses United States Postal Service Zip Code 47362. Until 1993, the HCR line was controlled by Consolidated Rail Corporation and was identified as the line between milepost 104.1 and milepost 110.5. The HCR line is the subject of Surface Transportation Board ("STB") Docket No. AB-865 (Sub. No. 0 (or 1) X ) and the subject of STB Finance Docket No. 34869.

6. "Document" shall be afforded the broadest meaning possible under the applicable rules and law. It shall include, without limitation, each original and each non-identical copy (whether different from the original by means of notes made on such copy or otherwise) of all forms of retained information. "Document" also includes, without limitation, all data, documents or information stored on computer or other device for the storage of electronic information; all electronic communications or messages, such as e-mail, including without limitation e-mail messages which have been printed out, e-mail messages which are stored on

computers of the sender or recipient, and e-mail messages which have been "deleted" by the sender or recipient but which may be "recovered" from any source (including personal or network computers, mainframe computers, or computer back-up media).

7 "Concern", "concerning", "refers", "referring", "relates", "relating to" or "regarding" shall mean mentioning, reflecting, pertaining to, making reference to, evidencing, describing, discussing, analyzing, or commenting on a matter, directly or indirectly, in whole or in part.

8 "And" and "or" have both conjunctive and disjunctive meanings as required by the context to elicit all information discoverable within the broadest scope of these requests.

9. "Any" and "all" shall mean "each and every."

### **INTERROGATORIES**

1. Please identify by date and activity all track maintenance you performed on the HCR line from 1998 to the present.

2. Please identify by date and activity all right of way maintenance you performed on the HCR line from 1998 to the present.

3. Please identify by date and name all shipments on the HCR line by shippers other than entities owned or controlled by HCR, William E. Smith or any other officer of HCR.

4. Please identify by date and name of shipper the last time the HCR line was used for rail traffic.

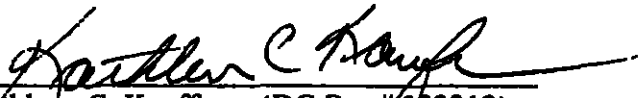
5. Please identify by date, location, and name of entity removing or paving over rails, all instances where the rails on the HCR line have been removed or paved over.

6. Please identify by date, location and transferee, all transfers of property interests in the right of way underlying the HCR line by HCR to another party.

7. Please identify by location, nature of connection, and railroad all connections between the HCR line and the interstate rail system that existed in 1993
8. Please identify by location, nature of connection, and railroad all connections between the HCR line and the interstate rail system that existed in August 2004.
9. Please identify by location, nature of connection, and railroad all connections between the HCR line and the interstate rail system that exist today.
10. Please describe by date and action all steps you took to comply with the STB's September 20, 2004, conditions for *de jure* abandonment.
11. If since 1993, you have maintained, built or received revenue from any building(s), loading platform(s), agent(s), station(s), or telegraph, telephone and/or fiber-optic line(s) alongside, above, beneath, or on the HCR Line, please identify for each item:
  - a. The item;
  - b. The period of time for which Honey Creek maintained, built or received revenue from the items; and
  - c. The amount of revenue Honey Creek received from the item, if any.
12. Please state whether you have maintained any schedules regarding shipments of train traffic on the HCR line and whether these schedules remain in your possession.
13. If you have been subject to any state, municipal, or local regulatory entity regarding the HCR Line, please provide the following:
  - a. The name of the state, municipal, or local regulatory entity.
  - b. The grounds on which the state, municipal, or local entity based its jurisdiction over the you with respect to the HCR line.

Dated: July 18, 2006

Respectfully submitted,

  
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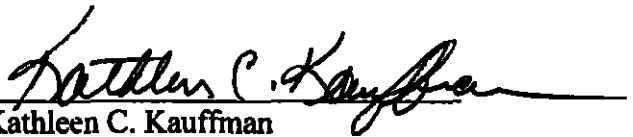
**CERTIFICATE OF SERVICE**

I hereby certify that I have this 18th day of July, 2006 served a copy of the Roberts' Interrogatories to Honey Creek Railroad, Inc. upon the following via facsimile and first class mail:

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# EXHIBIT H

# Alliance

## Court Reporting

P.O. Box 78261  
Indianapolis, IN 46278-0261

(317) 875-3914  
1-877-867-8600

**CERTIFICATE OF NOTARY AS TO  
FAILURE OF WITNESS TO SIGN TRANSCRIPT**

I hereby certify that Lisa C. Pierce, a Notary Public, in and for the County of Hamilton, State of Indiana, administered an oath at the deposition of WILLIAM E. SMITH on the 12<sup>th</sup> day of February, 2007;

That said deposition transcript, was made available to the witness for reviewing and signing under the applicable rules of procedure;

That the original transcript was not returned.

We are therefore filing this unsigned transcript on this 15th day of JUNE, 2007.

*Linda M. Bour*

Linda M. Bour, Notary Public

County of Residence: Marion  
My Commission Expires: 06/19/2008

**COPY**

Before the  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO: 34869

HONEY CREEK RAILROAD, INC  
PETITION FOR DECLARATORY ORDER

The deposition upon oral examination of WILLIAM E SMITH, a witness produced and sworn before me, Lisa C Pierce, a Notary Public in and for the County of Hamilton State of Indiana, taken on behalf of Gary L Roberts, Roberts Pipeline Construction Company, Inc and Roberts Construction, Inc., at the Henry County Courthouse, 1215 Race Street, Second Floor, New Castle, Henry County, Indiana, on the 12th day of February, 2007, commencing at the hour of 9 40 a m , pursuant to Applicable Rules of Procedure, with written notice as to time and place thereof.

ALLIANCE COURT REPORTING  
P O BOX 78261  
INDIANAPOLIS, IN 46278-0261  
(317) 875-3914  
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PAGE 2

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(9:40 a.m.)

February 12, 2007

WILLIAM E. SMITH, having been first duly  
sworn to tell the truth, the whole truth and  
nothing but the truth, relating to said  
matter was examined and testified as follows:

DIRECT EXAMINATION,

QUESTIONS BY JOHN H. BROOKE:

Q Would you state your name and spell your last name for the  
record, please.

A William E. Smith, S-m-i-t-h.

Q All right. Mr. Smith, have you ever given a deposition  
before?

A Yes, I have.

Q Okay. Then you understand the ground rules for the  
deposition, correct? I'm going to ask a series of questions  
today and ask for a response from you. If you could answer  
'yes' or 'no' so the court reporter can make sure we get an  
accurate record. All right?

A Okay.

Q All right, good. If at any time you want to take a break,  
please ask me. We're not in a marathon contest here. Okay?

A Okay.

Q We'll be accommodating; it'll be pretty informal. So if you  
want to take a break, just let me know. All right?

1 A Okay.  
2 Q If I ask you a question and you don't understand the  
3 question, please ask me to restate it or rephrase. Okay?  
4 A Okay.  
5 Q One thing I would ask, if you want to take a break, that we  
6 -- if there's a question pending, answer the question. Then  
7 we can have a nice clean record. Okay?  
8 A Sure.  
9 Q All right. It's my understanding, and this is from  
10 Mr. Wilson, that the purpose of this deposition is limited  
11 for the purpose for the STB matter only, correct?  
12 MR. WILSON: That's correct.  
13 MR. BROOKE: All right. And if the issues advance  
14 beyond the STB, then there will be a later deposition to  
15 cover the issues in the -- in the lawsuit --  
16 MR. WILSON: That's correct.  
17 MR. BROOKE: -- by the State Court. Okay. All  
18 right.  
19 Q Okay. Let's get into it. Mr. Smith, would you tell me where  
20 you live.  
21 A I live at 649 West Foster Heights, Rushville, Indiana.  
22 Q Okay. And are you employed, sir?  
23 A Yes. I'm self-employed.  
24 Q Okay. What sort of businesses do you have or -- business or  
25 businesses do you have?

1 A I'm in the grain business. And I farm and have a feed mill  
2 also. Feed -- feed out about 50,000 head of hogs a year. We  
3 run a railroad. Farm.  
4 Q Okay.  
5 A Raise grain, corn, soybeans.  
6 Q The grain business, where is that located?  
7 A Rushville and Morristown, Shelby County and Rush County.  
8 Q And what's the name of that grain business?  
9 A Morristown Grain Company, Incorporated.  
10 Q Okay. And the farm, where's the farm ground located?  
11 A Most of it's in Rush County. Have some in Shelby County.  
12 Have some in Shelby County, Kentucky.  
13 Q Is there a business name for the farm?  
14 A No. It's just William E. Smith.  
15 Q Okay. You haven't incorporated the farm or anything like  
16 that? Okay.  
17 A No.  
18 Q And then the feed mill, is that a feed mill that sells feed  
19 or do you just feed out hogs?  
20 A We've got -- we custom feed hogs.  
21 Q Okay.  
22 A We -- we grind the feed for the hogs that we custom feed.  
23 Q Okay. Do you actually own the hogs?  
24 A No.  
25 Q Okay. Do you just grind the feed for others to feed hogs?

1 A No. We -- we have buildings and -- 20,000 head of  
2 buildings. And we grind the feed for all those buildings.  
3 Q Okay. And what's the name of that business?  
4 A The hogs is William E. Smith. The feed mill is Intermix.  
5 Q Intermix?  
6 A Intermix Milling.  
7 Q Okay. Is that a corporation?  
8 A Yes.  
9 Q All right.  
10 A No, I'm sorry. It's LLC.  
11 Q It's an LLC. Okay. All right. And do you -- does the feed  
12 mill also sell feed to other persons for feed other than  
13 hogs, or is it just only hog feed?  
14 A No. We just -- we just manufacture feed for the hogs that we  
15 feed and that's for United Feed.  
16 Q Okay. All right. And then the railroad. What's -- the  
17 Honey Creek Railroad, is that the only railroad?  
18 A Yes. Honey Creek Railroad, Incorporated.  
19 Q Okay. Well, let's talk about the Honey Creek Railroad.  
20 Where is the -- where does the Honey Creek Railroad operate  
21 presently?  
22 A Rushville, Rush County, north of Rushville.  
23 Q Okay. How long is the line, the tracks line in Rush County?  
24 A Five-and-a-half miles.  
25 Q Where does it start and where does it end?

1 A It starts in an interchange in Rushville, and the CSX line  
2 serves it. And it ends one half mile north of County  
3 Road 450.  
4 Q Is that 450 North?  
5 A Yes, sir.  
6 Q Is there a terminal or some other station at the end of it  
7 there north of 450?  
8 A We have our grain elevator there.  
9 Q Okay. When did you purchase the Honey Creek Railroad?  
10 A I can't remember the exact date.  
11 Q Would it have been at or around the time that the Honey Creek  
12 Railroad was incorporated?  
13 A Yes, I would say so.  
14 Q See if I've got --  
15 A It would be in the early '90s.  
16 Q I think I've got it. Okay. I show from the Secretary of  
17 State a date of creation of March 23rd, 1993. Do you want to  
18 confirm that or --  
19 A No. That's okay.  
20 Q That's what I got off the internet from the --  
21 A It would have been somewhere -- of course the purchase of it  
22 would have been somewhere a little bit before that 'cause we  
23 had to do the incorporation after we bought it.  
24 Q Okay.  
25 A I'm saying that's probably ballpark figure, number.

1 Q So you bought the railroad a little bit before -- sometime  
2 before the incorporation of Honey Creek Railroad?  
3 A Yes, sir.  
4 Q Okay. All right. And what did you purchase in the early  
5 '90s for the Honey Creek Railroad?  
6 A A locomotive, actually two locomotives. I think it was --  
7 are you talking about the Rush County or Henry County?  
8 Q Well, was it all one purchase or was it more that one  
9 purchase?  
10 A Two different, separate purchases.  
11 Q Okay. Let's talk about Rush County.  
12 A Okay.  
13 Q Okay. Was it two locomotives for Rush County?  
14 A One.  
15 Q One? Okay. And then the track --  
16 A Yes.  
17 Q -- I presume? Okay.  
18 A Yes. Track, land and assets on it.  
19 Q The rails, the ties --  
20 A Yes. All that.  
21 Q -- all that good stuff. Okay. Were there any customers that  
22 you were able to obtain or purchase at the time?  
23 A No. Neither -- neither line had any customers on them.  
24 Q Okay. All right. Now, the Henry County, you said that was a  
25 separate purchase?

1 A Yes.  
2 Q Okay. And what did you purchase in Henry County?  
3 A Property, rail, ties, ballasts. I guess that's it.  
4 Q Okay.  
5 A Oh, a locomotive.  
6 Q Okay.  
7 A We purchased a locomotive for that.  
8 Q Was that locomotive to be used on the Henry County line?  
9 A Yes.  
10 Q Okay. Was it actually on -- operating on the line when you  
11 purchased it?  
12 A No. I -- I purchased these in -- out of Pennsylvania. I  
13 think it was from Conrail out of Altoona, I think it was.  
14 Q Were the locomotives part of the rail purchase?  
15 A No, sir.  
16 Q They were a separate transaction?  
17 A Yes.  
18 Q Okay. Okay. So -- and did you purchase the rail from  
19 Conrail as well?  
20 A Yes.  
21 Q Okay.  
22 A For Rush County?  
23 Q Rush County, yes.  
24 A No. Indiana Highrail.  
25 Q I'm sorry?

1 A Indiana Highrail.  
2 Q Indiana Highrail. Okay. What is Indiana Highrail?  
3 A I guess -- I don't know if I'm qualified to say what they  
4 really were. They were -- they had several short lines. I  
5 guess they were a shortline railroad company.  
6 Q Okay. How was it that you purchased this? Was this at an  
7 auction? Was this a straight sale? Or how did that come to  
8 be?  
9 A Straight sale.  
10 Q Okay. Were you told about them? Were you contacted? How --  
11 A They were -- they were --  
12 Q You have to explain how that works for me.  
13 A Excuse me. They were a carrier for us. They --  
14 Q Okay. All right.  
15 A They switched our cars in and out.  
16 Q For your grain company?  
17 A Yes.  
18 Q Okay. So they would actually operate the five miles there in  
19 -- in Rush County for your grain company?  
20 A Yes, sir.  
21 Q And also -- did they also service the one in Shelby County?  
22 A No.  
23 Q Okay.  
24 MR. WILSON: You mean Henry County. I think you  
25 mis --

1 MR. BROOKE: No, no, no. He said that his  
2 Morristown grain was in Rushville and also in Morristown in  
3 Shelby County.  
4 MR. WILSON: All right. I'm sorry.  
5 MR. BROOKE: Okay.  
6 Q There was a separate company that --  
7 A Yes.  
8 Q -- that serviced your Morristown Grain in Morristown,  
9 Indiana?  
10 A Yes, sir.  
11 Q Okay. So the Indiana Highrail just operated the one in  
12 Rushville.  
13 A Yes.  
14 Q Okay. Okay. And at some point did they tell that you they  
15 were -- they would sell? Or how what how did that all  
16 transpire? I'm just curious about that.  
17 A Yes, they did. And came up pretty quick, the sale of it  
18 did. And either I buy it or they were gonna' scrap it, so I  
19 bought it.  
20 Q Okay. Okay. The Henry County line, these are both -- Rush  
21 County and Henry County, for the record, both are known as  
22 the Honey Creek Railroad, correct?  
23 A Right.  
24 Q All right. Are these lines connected in any way?  
25 A No, sir.

1 Q Okay. They're just in two separate counties then?  
 2 A Right. Correct.  
 3 Q Okay. Okay. And the Henry County line, was that purchased  
 4 from Conrail?  
 5 A Yes.  
 6 Q Okay. All right. And where did the Henry County line start  
 7 and stop?  
 8 A The Henry County line started at the interchange of Norfolk  
 9 Western north of New Castle and east of State Road 3.  
 10 Q Okay. And that's where it connected to the Norfolk  
 11 Western --  
 12 A Correct.  
 13 Q -- line?  
 14 A Correct.  
 15 Q Okay. And where did it end?  
 16 A Just about a half mile beyond Sulfur Springs.  
 17 Q Would that be north of Sulfur Springs?  
 18 A I get mixed up up there.  
 19 Q Yeah, it is -- it's kind of not really straight north.  
 20 A What I think's north is a different direction. I never could  
 21 get that figured out.  
 22 Q Was that there at the grain elevator?  
 23 A Yes.  
 24 Q Okay. Did you own that grain elevator as well?  
 25 A Yes, sir.

1 Q Okay. Was that part of the Morristown Grain Company?  
 2 A Yes, it was.  
 3 Q Okay.  
 4 A And still is.  
 5 Q Oh, okay. You didn't mention it earlier so I didn't --  
 6 okay.  
 7 A Sorry.  
 8 Q Is that still operating?  
 9 A No, sir.  
 10 Q Any grain being stored there at all?  
 11 A No, sir.  
 12 Q Okay. Okay. I don't think I asked this, but how long is the  
 13 Henry County line?  
 14 A I believe it was 5.9 miles.  
 15 Q Okay. And how did the purchase from Conrail -- Conrail take  
 16 place?  
 17 A A representative from Conrail give me a call and asked if I  
 18 was interested in buying the line. Because they were serving  
 19 the line, and I was a customer of theirs, I suppose they  
 20 wanted to try and make sure I bought it. So that's what  
 21 happened.  
 22 Q Oh, kind of like the Indiana Highline. They were --  
 23 A Yes.  
 24 Q -- serving your -- your grain elevator, either buy it or  
 25 we'll scrap it kind of thing?

1 A Yes.  
 2 Q Okay. And did both these purchases take place at or around  
 3 the same time?  
 4 A Yes, they did.  
 5 Q Okay. Were there any other customers that you're aware of on  
 6 the Henry County line?  
 7 A No, there was not.  
 8 Q And then at some time later either -- I guess later you  
 9 bought a locomotive also?  
 10 A Yes.  
 11 Q Or bought two locomotives?  
 12 A Yes. Yes, sir.  
 13 Q Okay. And how did you get them to their respective lines?  
 14 A One of them was handled through Conrail and Norfolk Western,  
 15 the one for Sulfur Springs. The one for Rushville was  
 16 delivered through CSX Transportation.  
 17 Q Do they just drive them over there?  
 18 A No, sir. They have to -- they -- they prepare them for  
 19 shipment and they pull them like a regular car.  
 20 Q Oh, okay.  
 21 A Took them by train.  
 22 Q So they just add them to the train as a --  
 23 A -- as a car.  
 24 Q Okay. Is that what I see when I see -- when I see four or  
 25 five locomotives, is that one of them going some place to --

1 somebody bought it or -- I'm just curious. I just --  
 2 A No. Most of the time they're just running them. If they  
 3 don't need the power, they just shut them off --  
 4 Q Oh, okay.  
 5 A -- and pick them up, part of the train.  
 6 Q Okay. All right. So this -- if I saw this, this would just  
 7 be a car on the end of the train someplace or --  
 8 A It could be anywhere in --  
 9 Q Anywhere. Okay. That's interesting, huh. I'm not an expert  
 10 in the railroad like Mr. Wilson. So I just -- I do have a  
 11 fascination about trains, so you'll have to excuse me.  
 12 All right. The Henry County portion, it does not  
 13 operate presently, correct?  
 14 A That's correct.  
 15 Q And when did it stop operating?  
 16 A I believe it was in 2000.  
 17 Q Okay. And why did it stop operating?  
 18 A We had a collapse of a grain bin at Sulfur Springs elevator  
 19 which interrupted the service and covered the track up with  
 20 corn and debris.  
 21 Q Okay. Did that make the elevator then unusable when you had  
 22 the collapse?  
 23 A Yes, it did. It -- we couldn't get any further insurance  
 24 because they did not want to insure the elevator.  
 25 Q Okay. All right. So when the elevator stopped operating is

1 when the railroad stopped operating?  
 2 A Yes.  
 3 Q Is that pretty much right?  
 4 A Yes.  
 5 Q Okay. Was that the -- that whole collapse the subject of the  
 6 lawsuit that's pending up here in Henry County, Morristown  
 7 Grain versus some insurance --  
 8 A Yes, sir.  
 9 Q -- companies?  
 10 A Yes, sir.  
 11 Q Okay. That incident there was what caused the law -- or was  
 12 part of the lawsuit, right?  
 13 A Correct.  
 14 Q Okay. Okay. During the time that you operated the Honey  
 15 Creek line in Henry County, were -- did you have any  
 16 customers other than the Morristown Grain?  
 17 A No, we did not.  
 18 Q Okay. Okay. And are you the -- the sole shareholder of  
 19 Morristown Grain also?  
 20 A Yes.  
 21 Q Okay. When you purchased the Henry County line, did you  
 22 receive any information from Conrail as to all of the items  
 23 that you purchased, like the rail and the cross ties and  
 24 whatever land may have been there or land rights you had? I  
 25 mean, was there some sort of inventory that you got?

1 A No, sir.  
 2 Q Okay. So basically it was just -- was it an as-is purchase?  
 3 Would it be fair to characterize it that way?  
 4 A I suppose it would be, yes.  
 5 Q Okay. Did you perform or have someone perform some sort of  
 6 inspection of the rail before you purchased it?  
 7 A No, I did not. Conrail was running on that line before I  
 8 purchased it. They were picking up cars at the elevator so I  
 9 knew about what it was.  
 10 Q Okay. Did you have any kind of inspection of the railroad  
 11 line after you purchased it?  
 12 A You mean did I have anybody inspect it?  
 13 Q Yes.  
 14 A Not an outside company, no.  
 15 Q Okay. Did you inspect it?  
 16 A Yes.  
 17 Q And when did you inspect it?  
 18 A You want a date or --  
 19 Q Ballpark figure. Unless you know the date.  
 20 A No. I'm trying to figure a ballpark.  
 21 Q I presumed by the question you didn't know the date. If you  
 22 could give me a ballpark figure. After you purchased it was  
 23 it six months? a year? couple years?  
 24 A I think right after we got the locomotive.  
 25 Q Okay. And when did you obtain the locomotive? In the spring

1 of the year? fall? summer? You'd need it before harvest,  
 2 didn't you? Probably got it before harvest?  
 3 A I would say so. I'm gonna say probably mid summer.  
 4 Q Okay. Okay. And what did you do to inspect the railroad  
 5 line?  
 6 A Check ties and ballasts, condition of the rail. See if there  
 7 were -- how many bad ties there were to support the rail.  
 8 Q Okay. And physically did you just walk the line or --  
 9 A If I remember -- if I recall correctly we did a little bit of  
 10 walking it and also with the locomotive.  
 11 Q So you got to ride in the engine then, right?  
 12 A Yes.  
 13 Q Okay. Probably not the correct railroad term to call it an  
 14 engine but --  
 15 Okay. Did you have somebody assist you in this?  
 16 A I had a elevator manager there.  
 17 Q I'm asking: Is there -- is there someone that -- that could  
 18 look at rails or had some expertise in the rails to look at  
 19 and see which ones were good and which ones -- or the ties,  
 20 which ones were good, which ones weren't? Unless you had  
 21 that expertise.  
 22 A Yes.  
 23 Q You do?  
 24 A Yes.  
 25 Q Okay. Have you -- did you work in the railroad before or --

1 A No. I've just been around them, shipping grain. And -- and  
 2 having railcars, you know what railroad has to be.  
 3 Q Okay. So you could spot a bad tie from a good one?  
 4 A Oh, very easily.  
 5 Q Okay. Okay. And you could spot a -- a good rail and a bad  
 6 rail and the differences?  
 7 A Yes.  
 8 Q Okay. All right. Now, when you purchased the -- the -- the  
 9 line from Conrail in Henry County, you told me that you  
 10 bought the rails, ties, ballasts and property. Are you  
 11 talking about real property or other personal property?  
 12 A The whole property, land and all.  
 13 Q Oh, the land? Okay. All right.  
 14 A Yes.  
 15 Q All right. I wanted to know which -- if there was other  
 16 property besides the rail, ties -- you're talking about the  
 17 land.  
 18 A Yes.  
 19 Q Okay. Was that the rights in land? Or was there land that  
 20 went with it too at some point or -- I know there's been a  
 21 big controversy about railroad lines and all that stuff in  
 22 Indiana before so --  
 23 A I assume that I purchased the -- the property as far as the  
 24 steel ties and ballasts and land.  
 25 Q Okay. The real property itself?

1 A Yes.  
 2 Q Okay. Well, did Conrail ever tell you what kind of interest  
 3 they had in the land, whether they had a right-of-way  
 4 easement or a fee-simple ownership or any of that kind of  
 5 stuff?  
 6 A No.  
 7 Q Okay. Okay. Did you ever file a tariff for the Henry County  
 8 line?  
 9 A Not that I can remember.  
 10 Q Were there arrangements between Morristown Grain and Honey  
 11 Creek Rail as to the cost for transporting the grain on the  
 12 -- on the line in Henry County?  
 13 A No. We just run it as a branch off the -- off the Norfolk  
 14 Western and hauled our own products down there. And that was  
 15 the main reason for having the railroad.  
 16 Q Okay. So it wasn't like Honey Creek sent a bill to  
 17 Morristown Grain for operating the rail?  
 18 A No.  
 19 Q Okay.  
 20 A We did get \$35 a car for every car that -- that we shipped to  
 21 the NS.  
 22 Q Okay. So Norfolk Southern would pay Honey Creek so much a  
 23 car?  
 24 A Yes.  
 25 Q Okay. I presume that had been \$35 for a loaded car? Yes?

1 A Yes, sir.  
 2 Q Okay. And then -- and, see, this is where my ignorance of  
 3 the railroad industry -- does Norfolk Southern then charge  
 4 Morristown Grain to haul the grain cars to wherever they're  
 5 going? Is that how that works?  
 6 A No. The end user pays for the freight.  
 7 Q Oh, okay.  
 8 A We sell it FOB.  
 9 Q Okay. All right. Okay. And they pay -- they pay the  
 10 delivery. Okay. So the grain is sold FOB from your facility  
 11 either in Sulfur Springs or Rushville, correct?  
 12 A Yes.  
 13 Q And then whoever buys it then pays the transportation charge?  
 14 A Yes, sir.  
 15 Q Okay. Did you ever move grain from Sulfur Springs down to  
 16 Rushville?  
 17 A By rail?  
 18 Q Yes.  
 19 A No.  
 20 Q Okay. What size -- let me ask this: How many bushels could  
 21 you store in Sulfur Springs?  
 22 A Half million, 500,000.  
 23 Q Would that be dependent upon whether it's corn or soybeans or  
 24 you could do both of them or --  
 25 A Yes.

1 Q Okay. And what was -- what's the capacity there in  
 2 Rushville?  
 3 A Million and a quarter.  
 4 Q 825,000?  
 5 A No. Million and a quarter.  
 6 Q Oh, million and a quarter. I'm sorry. Okay. But you  
 7 wouldn't ship grain between Sulfur Springs or Rushville  
 8 because of capacity issues like that, would you?  
 9 A No.  
 10 Q You need more space in Sulfur Springs, send them to  
 11 Rushville?  
 12 A That can't happen.  
 13 Q Okay. Did you do any grain storage besides -- besides  
 14 harvest time at Sulfur Springs? Would you store there  
 15 throughout the year or --  
 16 A You mean presently?  
 17 Q Yeah.  
 18 Well, no. Before when you were operating.  
 19 A Ask that question again.  
 20 Q Probably wasn't a very good question. Well, let me ask it --  
 21 did you do any grain storage after harvest season there at  
 22 Sulfur Springs?  
 23 A Yes. We run the elevator all year 'round. We have grain  
 24 coming in all year 'round.  
 25 Q Okay.

1 (Exhibits 1 through 3 were marked  
 2 for identification, and the  
 3 following proceedings were had:)  
 4 Q Okay. Mr. Smith, I'm going to hand you some exhibits that  
 5 have been marked Exhibits 1, 2 and 3. And ask you -- first  
 6 of all, take a look at those; see if you can familiarize  
 7 yourself with those. I believe they came from your  
 8 information to the STB but double check that please. Make  
 9 sure that I'm accurate.  
 10 (Thereupon, after an off-the-record discussion  
 11 between the witness and Mr. Wilson,  
 12 the following proceedings were had:)  
 13 A What's your question?  
 14 Q Okay. First of all, I wanted to make sure you recognized all  
 15 three of those documents. Do you?  
 16 A Yes, I do.  
 17 Q Okay. And, for the record -- keep those in front of you,  
 18 sir.  
 19 A Okay.  
 20 Q For the record, are those three either maps or aerial  
 21 photographs of the Sulfur Springs line, the Henry County  
 22 line?  
 23 A Yes, it is.  
 24 Q Okay. Exhibit Number 1, that is an aerial photograph showing  
 25 the, I guess, beginning and end of the Honey Creek Railroad

25

1 line in Henry County; does it not?  
2 A I think it does, if I can pick it out here.  
3 Q Little white arrows, I think.  
4 A Yes, okay.  
5 Q All right.  
6 A Yes. Okay. Yes, it does.  
7 Q Okay. All right. So that shows the -- the end or terminus  
8 at -- that's the Sulfur Springs -- Sulfur Springs elevator,  
9 correct?  
10 A Yes.  
11 Q All right. And then it connects to the Norfolk Western or  
12 Norfolk Southern line --  
13 A Southern.  
14 Q Norfolk Southern line just east of State Road 3?  
15 A Yes.  
16 Q Okay. And Exhibit Number 2, if you could go to that one.  
17 Exhibit Number 2 is a map of different railroads in Indiana.  
18 And there's an arrow indicating the Honey Creek Railroad in  
19 Henry County, correct?  
20 A Yes.  
21 Q All right. Is there a -- any indication of Honey Creek  
22 Railroad in Rush County on that map? 'Cause I looked for  
23 it. I couldn't see it.  
24 A No, there isn't.  
25 Q Okay. Is there a reason why?

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1 A Where was these maps generated from?  
2 Q It's my understanding that they came from your Application  
3 for Abandonment to the STB. And so I don't know where they  
4 came from. They're out of your application.  
5 MR. WILSON: We off the record?  
6 MR. BROOKE: Let's go off the record.  
7 (Thereupon, after an off-the-record discussion,  
8 the following proceedings were had:)  
9 Q So that we can clear up this question that I had. The map  
10 shows common carrier rail lines in different parts of the  
11 country, this being Region 14. And the Rush County line was  
12 not a common carrier line. It was a private line; is that  
13 right?  
14 A Correct.  
15 Q All right. And what -- do you know what made the distinction  
16 between the common carrier line and a -- and a private line?  
17 A No, I don't.  
18 Q Okay. Okay. And then Exhibit Number 3, that is another map  
19 -- actually, I think it's a USGS map showing the Sulfur  
20 Springs or the Henry County line, little closer view,  
21 correct?  
22 A Would that be between the two black lines?  
23 Q Yes.  
24 MR. WILSON: Yeah.  
25 A Yes. Correct.

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1 Q Okay. Did the Sulfur Springs line have any bridges on it?  
2 A No. Not that I know of.  
3 Q Okay. Did it have any stations on it?  
4 A Could you clarify what a station would be.  
5 Q Where others could hook up to it or you could obtain  
6 customers' cars or that sort of thing.  
7 A No.  
8 Q No other connections or anything like that on the Sulfur  
9 Springs line?  
10 A No.  
11 Q Was there a loading platform at the elevator?  
12 A No.  
13 Q Okay. How did the grain get into the cars then at the  
14 elevator?  
15 A It was loaded through a elevator system, hopper cars.  
16 Q Okay. So it would just be -- an auger would come down and  
17 load the cars up from the elevator itself?  
18 A There would be a elevator leg or a spout out from one of the  
19 arch tanks.  
20 Q Okay. All right.  
21 A Hopper cars.  
22 Q All right. So there wasn't a loading platform, per se? It  
23 was just, pull the car up, back the cars into that spot and  
24 load them up? Is that how that worked?  
25 A Yes.

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1 Q Okay. Okay. And there were no other places to load cars  
2 along that line down to the -- where it hooked into the  
3 Norfolk Southern, right?  
4 A No, sir.  
5 Q Okay. Did you perform maintenance along this line?  
6 A Yes, we did.  
7 Q Okay. What sort of maintenance did you perform?  
8 A Mainly inserting ties.  
9 Q Okay. Did you keep record of that maintenance?  
10 A Yes, I think so. I'm not positive about -- I know that the  
11 manager of the elevator put them in. And -- but he has since  
12 deceased. So I don't know -- I don't know where the records  
13 are.  
14 Q What was the manager of the elevator's name?  
15 A Raymond Pasco.  
16 Q Do you know how to spell his last name? 'Cause the court  
17 reporter will ask you too so --  
18 A P-a-s-c-o, I guess.  
19 Q Okay. You think he kept records, but you don't know where  
20 they are; is that my understanding?  
21 A I'm sure he did.  
22 Q Are there obligations to keep records of maintenance of  
23 railroad lines?  
24 A No.  
25 Q No?

1 A Not for our lines, just being a branch line.  
 2 Q Okay. What is a branch line?  
 3 A Just a branch off of the main carrier.  
 4 Q Were you required to keep financial records of the railroad  
 5 revenues?  
 6 A We weren't required but I'm sure we kept record of it.  
 7 Q Was there a time when you -- you obtained a loan from the  
 8 Indiana Department of Transportation?  
 9 A Yes.  
 10 Q And did they require you to keep records of the financial  
 11 operations of Honey Creek Railroad as part of the loan  
 12 requirements?  
 13 A I cannot remember.  
 14 Q Okay.  
 15 MR. BROOKE: Let's go ahead and mark that too,  
 16 please.  
 17 (Exhibit 4 was marked for identification,  
 18 and the following proceedings were had:)  
 19 Q Okay. Let me hand you what's marked as Exhibit Number 4.  
 20 Take a look at that with your attorney. And we'll go off the  
 21 record while you -- that's a multipage document so --  
 22 (Thereupon, after a brief recess,  
 23 the following proceedings were had:)  
 24 MR. BROOKE: We're back on the record after a short  
 25 break.

1 Q Have you had an opportunity to take a look at Exhibit  
 2 Number 4?  
 3 A It's a loan from the INDOT for the rail -- for the railroad.  
 4 Q Okay. All right. And it bears your signature on at least  
 5 one or two pages in there?  
 6 A I think I saw it in here, yes.  
 7 Q Okay. All right. All right. And that loan is for the  
 8 operation of the line in Henry County; is it not?  
 9 A Yes.  
 10 Q Okay. And it was to purchase and rehabilitate approximately  
 11 six miles of track?  
 12 A Yes.  
 13 Q All right. And do you remember how much money was loaned to  
 14 you from -- in that loan?  
 15 A Says 200,000. I assume that would be what it is.  
 16 Q Okay. All right.  
 17 A Yep.  
 18 Q Okay. All right. Did you use those loan proceeds to  
 19 purchase the line from Conrail?  
 20 A Yes, I did.  
 21 Q Okay. And what -- was that the approximate cost from Conrail  
 22 for that line was \$200,000? Not including the locomotive  
 23 'cause that was a separate transaction.  
 24 A I think that was for some ties and -- ties, ballasts and  
 25 repairs to the line, looks to me like.

1 Q So then part of the money was used to buy from Conrail and  
 2 the other part was to buy some ties, ballasts and --  
 3 A Yes.  
 4 Q -- and rail?  
 5 A Yes. Looks to me like that's what it was.  
 6 Q Okay. Okay. If I could see the document, please.  
 7 A Sure.  
 8 Q Thank you.  
 9 Okay. Did you make any improvements to the rail  
 10 crossings at the roads at this -- at this time when you  
 11 obtained the loan from -- or after you obtained the loan from  
 12 INDOT?  
 13 A I cannot remember anything about the road crossings. But I  
 14 do know we put in a lot of railroad ties.  
 15 Q Okay. Okay. One of the, I guess, purposes indicates that --  
 16 for the improvement of the rail line for the operators and  
 17 also the motoring public at rail crossings. That's what it  
 18 says there on the document; does it not?  
 19 A I didn't read that part.  
 20 Q Okay. Look in this part here in the middle of the page.  
 21 Purchase of the track prevents the line from being abandoned  
 22 by Conrail. I think it's the second full sentence. It's a  
 23 long sentence but it's the second one.  
 24 A Uh-huh.  
 25 MR. WILSON: I think we'd be happy to stipulate

1 whatever it says there --  
 2 MR. BROOKE: Okay.  
 3 MR. WILSON: -- is --  
 4 THE WITNESS: Yeah.  
 5 MR. WILSON: -- is what the document says. How  
 6 it's applied and whether or not that improved crossings --  
 7 improved safety at those crossings is a question of how you  
 8 interpret that. But we'll certainly stipulate to what the  
 9 document says.  
 10 MR. BROOKE: Okay.  
 11 Q All right. Did you make any improvements to the rail  
 12 crossings?  
 13 MR. WILSON: I think Mr. Smith's testimony is that  
 14 he doesn't remember.  
 15 A That's the problem I have. I'm trying to remember.  
 16 Q Okay.  
 17 A And I cannot remember.  
 18 Q Okay. Well, we -- we talked about maintenance. And you said  
 19 that the elevator -- elevator manager replaced some ties. Do  
 20 you know what other maintenance was performed along this --  
 21 the Sulfur Springs line other than replacing ties?  
 22 I was thinking maybe this document might help  
 23 refresh your recollection but --  
 24 A Well, ties and tamping and ballasts. When you put in ties  
 25 you have to tamp some ballasts back around the ties.

1 Q Okay.

2 A Which is, you know, the stone. All that goes together,

3 leveling the track.

4 Q Was there any maintenance work done with regard to drainage

5 along the line?

6 A I don't think we had any drainage problems very much.

7 Q Oh, I meant to ask this earlier. The grain cars that you

8 would use and fill up, would those -- did those belong to

9 Honey Creek or did those belong to somebody else?

10 A They would either be leased cars from the company that bought

11 the grain or they would be system cars which would be Norfolk

12 Southern cars.

13 Q Okay. Honey Creek didn't have any cars of its own?

14 A No, sir.

15 Q Okay. All right.

16 You did report revenues to the Indiana Department

17 of Transportation on a quarterly basis. Do you recall that?

18 A No, I don't.

19 Q Okay. Okay. And the information I have from IN -- INDOT,

20 Indiana Department of Transportation, there are quarterly --

21 Honey Creek Railroad Quarterly Revenues Reports from 1994 to

22 2005. Okay? And I think Mr. Wilson may have seen those as

23 well.

24 There is a year missing which is 1999. Can you

25 tell me why those records would be missing from INDOT?

1 A No, I can't.

2 Q Okay. At least the first three quarters are missing for 1999

3 as for your transportation revenue. Do you know where those

4 records might be?

5 A I have no idea. Didn't even know they were missing.

6 Q Who keeps the books and records for the Honey Creek Railroad?

7 A A lady at Morristown is in charge of that.

8 Q What's her name?

9 A Linda Starrett.

10 Q S-t-a-r-r-e-t-t?

11 A Yes. Yes.

12 Q Okay. There's also, according to INDOT's records, revenue

13 missing for 1996, the entire year 1996, and the first quarter

14 of '95. Do you know why those would be missing?

15 A Did not know they were missing.

16 Q So those records should exist someplace at Morristown Grain?

17 Linda might know where they are?

18 A I assume so.

19 Q Okay. Does she have control or keep track of all the records

20 for Honey Creek Railroad?

21 A Yes, she does.

22 Q Okay. Okay. We had sent to you a request for certain

23 documents. Do you recall that?

24 A No, I don't.

25 Q You don't? Okay.

1 MR. BROOKE: Go ahead and mark those.

2 (Exhibits 5 and 6 were marked for identification,

3 and the following proceedings were had:)

4 Q Let me hand you what's been marked Exhibit Number 5. First

5 of all, take a look at that.

6 Does that refresh your recollection? Do you recall

7 those interrogatories, answering those questions?

8 A No, I don't.

9 Q You don't? Did you answer those questions?

10 A If I don't remember it, I don't know if I did or not.

11 Q Okay. Is there anybody else then at Honey Creek that would

12 have answered those questions?

13 A I can't answer for that.

14 Q Okay. You signed those as your answers, correct?

15 A I see that. That doesn't -- that doesn't mean I remember

16 doing it.

17 Q Okay. Well, let's go through those then.

18 A Okay.

19 Q Maybe this will help refresh your recollection.

20 Interrogatory Number 1 we talk about -- or made a request for

21 all track maintenance you performed on the HCR line from 1998

22 to the present. You see that?

23 A Yeah. Okay.

24 Q And your answer is: I did not keep a record of maintenance.

25 That's what it says, right?

1 A That's what it says.

2 Q Okay. All right. Well, and earlier you told me that records

3 may have been kept by the elevator manager. So I'm just

4 trying to find out, did you keep them and you just don't have

5 them or you didn't keep them or what?

6 MR. WILSON: John, let's try to cut to the chase

7 here and not belabor this issue. I think it's clear that

8 Mr. Smith didn't keep any maintenance records. If they were

9 kept by the elevator operator, and if we can locate them --

10 we'll undertake a search and see whether or not there are any

11 records still in existence, do what we can to provide them to

12 you, if -- if they've been overlooked or if they weren't

13 produced in response to the interrogatories here. We're not

14 trying to play games.

15 MR. BROOKE: Okay. I'm just trying to find out --

16 MR. WILSON: Exactly. I understand. But we'll see

17 what we can -- you know, I'll get with Bill Smith and we'll

18 see what we can do.

19 MR. BROOKE: Okay. All right.

20 MR. WILSON: I mean Bill Keaton. And we'll see

21 what we can do about locating those, if there -- if there are

22 any still that are around.

23 THE WITNESS: I did not personally keep any

24 records. I don't know what we've got, but I did not

25 personally keep any records.

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1 MR. BROOKE: Okay. All right. And I think that if  
2 there are records that Honey Creek has, as a separate  
3 corporation, then we'll -- we can try and find those. Okay?  
4 THE WITNESS: Sure.  
5 MR. BROOKE: And maybe Linda has some of that stuff  
6 too. Okay?  
7 MR. WILSON: Some of those records go back over ten  
8 or 15 years. And --  
9 MR. BROOKE: Sure.  
10 MR. WILSON: -- you know, they don't -- the  
11 retention requirements aren't particularly stringent in this  
12 area. So whether or not they have maintained them or not, I  
13 don't know. We'll have to go back and make another inquiry.  
14 MR. BROOKE: Let me hand you what's marked as  
15 Exhibit Number 6 then. And take a look at that document, if  
16 you would, please.  
17 And if you could -- we could have the same  
18 agreement on those. If there are documents -- first -- you  
19 know, the first interrogatory or first request asks for all  
20 documents in reference to the Interrogatories, which may have  
21 been the maintenance records, if they exist.  
22 MR. WILSON: Uh-huh. Well, I'll go back. And, you  
23 know, Bill Keaton, Mr. Smith's local counsel, assisted in the  
24 responses here. And I assume that he made a good-faith  
25 effort to get these documents. But we will -- we will replew

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1 the field and make sure that there weren't any that were  
2 overlooked.  
3 But I assume he did a thorough job. So I'll go  
4 back and we'll make sure that that's the case.  
5 MR. BROOKE: Okay.  
6 Q Okay. All right. When discussing the revenues for the Henry  
7 County -- or Honey Creek Railroad, and if there are revenue  
8 reports made to the Department of Transportation, would you  
9 know how to separate out what the revenue was for the Sulfur  
10 Springs line as opposed to the Rushville line?  
11 A No.  
12 Q Okay. And according to the records of the Indiana Department  
13 of Transportation, the Honey Creek Railroad was involved in  
14 some scrap sale starting about the second quarter of 2004.  
15 What was that -- where did that scrap come from and what did  
16 it consist of?  
17 A Beginning 2004?  
18 Q Yeah. Looks like the second quarter of 2004.  
19 A Off which line?  
20 Q It just says Honey Creek Railroad, Honey Creek Railroad  
21 Quarterly Revenues.  
22 A We took some 175-pound (sic) rail up from Rushville and  
23 relaid it with the track from off the Sulfur Springs line.  
24 Sold the light rail scrap off of -- the 75-pound scrap, we  
25 sold it.

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1 Q You have to explain to me what you just -- what you just  
2 meant by what you said there.  
3 A All right. The -- the rail that we had at Rushville was  
4 75-pound rail --  
5 Q Okay.  
6 A -- which was very small rail.  
7 Q All right.  
8 A Put in about little after the turn of the century, very early  
9 1900s. It was made for little cars and steam engines. And  
10 that's what that rail was at Rushville. The rail at Sulfur  
11 Springs was much heavier rail. It was 130-pound rail. And  
12 we took up two mile of the 130-pound rail and replaced it,  
13 took it to Rushville and scrapped out the 75-pound rail.  
14 MR. WILSON: Excuse me.  
15 (Thereupon, after a telephone interruption,  
16 the following proceedings were had:)  
17 MR. BROOKE: Take a break for a second.  
18 (Thereupon, after a brief recess,  
19 the following proceedings were had:)  
20 A You understand now what I -- what I did?  
21 Q Well, let me just, so we can go back on the record here, make  
22 sure I understand.  
23 You took some 130-pound rail from Sulfur Springs --  
24 you took up about two miles of that, and you replaced the  
25 lighter rail track in Rushville with that rail from Sulphur

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1 Springs.  
2 A And scrapped the lighter rail.  
3 Q And scrapped the lighter rail.  
4 A Yes.  
5 Q And that was done in 2004?  
6 A I think it was.  
7 Q Okay. And do you know what two-mile section you took up from  
8 the Sulfur Springs line, where that was?  
9 A It was from the -- from the interchange of Norfolk Western  
10 back west, I guess. It was -- it would be called west.  
11 Q Okay. Let's look at Exhibit Number 3.  
12 A Okay.  
13 Q So would it have been from the --  
14 A From this -- from this point here (indicating).  
15 Q Back towards --  
16 A Yeah. To along in there (indicating).  
17 Q Okay. Now, when you're measuring the rail -- just for my own  
18 edification, when you're measuring a rail, say, two mile of  
19 rail, we are actually talking about two miles of two rails?  
20 A Yes, sir.  
21 Q Okay. It's not one mile of two rails; it's two miles of --  
22 okay. All right. I just wanted to make sure.  
23 A I understand.  
24 Q And I've got the court reporter all confused now so that's  
25 good.

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1 MR. BROOKE: Okay? All right.  
2 Q How long did this process take place? I mean, how many  
3 quarter -- I've got seven quarters here that we have scrap  
4 sales of about 50,000 plus. Would that two miles have  
5 covered all seven quarters or --  
6 A I don't understand what you mean by seven quarters.  
7 Q Okay. Well, let me show you what I've got here. I did a  
8 spreadsheet on revenues reported to the Indiana Department of  
9 Transportation. I don't know if you can read that or not.  
10 A Uh-huh.  
11 Q Okay. It breaks out revenue and scrap sales. Do you see  
12 that?  
13 A Yes.  
14 Q Okay. And according to the Department of Transportation  
15 records, scrap sales started -- you'll have to excuse me --  
16 here in the second quarter of 2004.  
17 A Oh. We didn't always scrap it as soon as we took it up.  
18 Q Okay.  
19 A Played the market.  
20 Q All right. So what -- I guess what my question is: That two  
21 miles that you took up, did you scrap that? Did you take up  
22 more than just the two miles to cover the seven quarters  
23 there?  
24 A We had other scrap rail laying at Rushville --  
25 Q Okay.

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1 A -- from prior -- in fact, I had scrap rail laying around  
2 there that we took up, 75-pound rail, for a couple or three  
3 years.  
4 Q And was that rail that you'd also replaced from Sulfur  
5 Springs line?  
6 A No.  
7 Q Okay. That 75-pound rail, I think that was right, that you  
8 took up, where did -- what did you replace that with?  
9 A Rail that I bought in other -- from other people.  
10 Q Okay. Okay. What other people would you have bought rail  
11 from?  
12 A I'm trying to think of the name of the company. Seemed like  
13 it was National -- National Salvage or something like that.  
14 I could find it.  
15 Q Where are they located?  
16 A I think they're out of state.  
17 Q Do you know which state?  
18 A No. I'd have to -- I'd have to look it up.  
19 Q Okay. And they actually have rail that -- intact rail that  
20 you can buy; is that how that work?  
21 A Oh, yes.  
22 Q Okay.  
23 A They -- they take it up from abandoned railroads and people  
24 that go out of business and they resell it.  
25 Q Okay. Do they then buy the scrap too?

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1 A Well, I suppose they would.  
2 Q Okay. Did you ever sell them any of your 75-pound rail?  
3 A No.  
4 Q How would you sell that?  
5 A To a -- a scrap dealer. Someone that dealt in -- in -- like  
6 a scrap yard.  
7 Q Just a metal scrap dealer?  
8 A Uh-huh.  
9 Q Yes?  
10 A Yes.  
11 Q Okay. Good. That's what you meant by playing the market  
12 was --  
13 A Yes.  
14 Q -- the metal market moves -- the scrap metal market moves up  
15 and down, right?  
16 A Yes.  
17 Q Okay. Would you cut those 75-pound rails up yourself?  
18 A No.  
19 Q Would they do it at the scrap yard?  
20 A Yes.  
21 Q So you would have to haul the rails in their section lengths  
22 to the scrap yard?  
23 A No. They come and get them.  
24 Q Oh, they come and get them? Oh, okay. How long is a rail  
25 section? Just curious.

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1 A They vary anywhere from in the 30s to 40-some feet to --  
2 Q Is that depending on the strength of the rail?  
3 A No. That just depends on probably the equipment it was to  
4 haul it with at the time it was put in.  
5 Q Okay.  
6 A Length of the trucks.  
7 Q Okay. Okay. Other than that two-mile section on the Sulphur  
8 Springs, have you taken up any more of the track on the  
9 Sulphur Springs line?  
10 A I took up a little bit on through -- I don't know which --  
11 which way that is in -- north, east and south, of course, at  
12 Sulphur Springs. But it would have been beyond the  
13 elevator. We had some excess down there, it was 130-pound,  
14 we took up when we took up the other to take it -- transfer  
15 it to Rushville.  
16 Q Okay. So on Exhibit Number 3 it would have been --  
17 A It would have been right in here (indicating).  
18 Q Just past the black line?  
19 A I would say so.  
20 Q Or just in front of the black line or --  
21 A It would have probably been a little bit past, I'm guessing.  
22 Q Okay.  
23 A Somewhere in there. It's hard to tell on that map.  
24 Q It would have been past the elevator though?  
25 A Yes.

1 Q Okay. And the elevator's pretty close to what, State  
2 Road 36?  
3 A It's right on 36.  
4 Q Right on 36.  
5 A Yes.  
6 Q And you would have had some line past the elevators --  
7 A Yes.  
8 Q -- to back the cars up, wouldn't you?  
9 A Yes. Yes.  
10 Q Okay. And do you know when you took up that excess past the  
11 elevator?  
12 A That was probably -- I'm going to guess it would have been  
13 somewhere around '02.  
14 Q Okay.  
15 A It could have even been before that. Maybe -- maybe 2000.  
16 I'm not sure.  
17 Q Okay.  
18 (Exhibit 7 was marked for identification,  
19 and the following proceedings were had:)  
20 Q Let me hand you what's been marked Exhibit Number 7 and ask  
21 if you recognize that document.  
22 A Yes. I recognize it.  
23 Q Okay. For the purposes of the record, what is Exhibit  
24 Number 7?  
25 A It's a letter from INDOT to Honey Creek Railroad.

1 Q Okay. That letter concerns some issues about pulling up some  
2 rails that they have a security interest in on the Honey  
3 Creek line in Henry County; is that correct?  
4 A Correct.  
5 Q All right. And that relates to Exhibit Number 4, which is  
6 your loan from INDOT, correct?  
7 A Correct.  
8 Q All right. INDOT had a security interest in the assets of  
9 the Honey Creek line in Henry County as security for the loan  
10 in Exhibit 4; did they not?  
11 A Correct.  
12 Q All right. And so INDOT found out that you were removing  
13 rail from Honey -- from Henry County and taking it to Rush  
14 County.  
15 A Right.  
16 Q And that was affecting their security interest in -- for the  
17 loan, correct?  
18 A It -- yeah.  
19 Q Okay.  
20 A Yes.  
21 Q So this rail that you pulled up, this two-mile rail that you  
22 pulled up, that was done in 2002, wasn't it?  
23 A I think it was.  
24 Q Okay. Rather than 2004 as you told me earlier.  
25 A Yes.

1 Q Okay.  
2 MR. WILSON: Let me clarify something, John. I  
3 think he said he sold scrap in 2004.  
4 THE WITNESS: Yes.  
5 MR. BROOKE: Well, he also told me that he pulled  
6 up the rail in 2004 for the Norfolk Southern connection, the  
7 two-mile rail.  
8 THE WITNESS: Well, I think it was -- I think it  
9 was 2002.  
10 MR. WILSON: Okay.  
11 THE WITNESS: I think it was. I mean, I'm not  
12 saying positive if it was.  
13 Q Okay. Well, that letter pretty well tells you, doesn't it?  
14 A I think it does. That refreshes my memory somewhat.  
15 Q Okay. Okay. Do you remember any discussions with people at  
16 INDOT about the Honey Creek line and pulling up the rails?  
17 A Yes, I do.  
18 Q Okay. Tell me what you can recall.  
19 A Well, just like this letter says, that they had a security  
20 interest on that line. And I didn't really think too much  
21 about it because I was moving it to the other line. I wasn't  
22 selling it or anything. So we finally worked it out where I  
23 gave them a security interest on the line at Rushville, which  
24 worked it out. Everything was fine.  
25 Q Okay. Do you know a person at INDOT named Lavon Marshall?

1 A I do.  
2 Q And what is Lavon Marshall's position?  
3 A I do not know. I know she works there.  
4 Q Okay. All right. And was Lavon Marshall one of the people  
5 you talked with at INDOT?  
6 A Yes. 'Cause I have talked to her before.  
7 Q Okay. All right. Did you have any discussions with Lavon  
8 Marshall about abandonment of the Honey Creek line in Henry  
9 County?  
10 A I can't recall.  
11 Q Okay. Do you know a Mike -- is it Scheme (phonetic)?  
12 Skiney (phonetic)? S-c-i-m-e.  
13 A Skiney (phonetic).  
14 Q Scheme at INDOT?  
15 A I haven't talked to him for a long time. But I'm sure I did.  
16 Q Okay. Did you have any conversations with him about  
17 abandonment of the Honey Creek line in Henry County?  
18 A I may have. I can't recall what was said or --  
19 Q Okay. Okay. Do you remember a conversation, both in  
20 February and August of 2002, where Mike Scheme advised you  
21 that it was in your best interest to abandon the -- get the  
22 abandonment application filed with STB as soon as possible?  
23 A I can't remember.  
24 Q Okay. Do you recall telling Mike Scheme that you were  
25 hesitant about filing the abandonment application because you

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1 didn't want to -- you didn't want the right of way to revert  
2 to the property owners?  
3 A Could have been. I think so.  
4 Q Okay. Did you have some reservations about filing an  
5 abandonment application because of the reversionary rights of  
6 the property owners?  
7 A I don't know that I had that. I did -- I do remember saying  
8 something about that.  
9 Q Okay. Saying something about you didn't want to file the  
10 abandonment application in 2002 because you were worried  
11 about the reversionary rights of the property owners along  
12 the line?  
13 A No.  
14 Q Okay. What did you -- what do you recall saying?  
15 A I can't recall now.  
16 Q Was that a concern of yours was the reversionary rights of  
17 the property owners in the abandonment process?  
18 A Well, it shouldn't have been because I assumed that I owned  
19 the property.  
20 Q Okay. Did you do a title search on the -- on the real estate  
21 itself to know whether you owned it or had a right of way?  
22 A I don't think I did.  
23 Q Okay. Do you know whether you own it or have a right of  
24 way? You understand what a right of way is, first of all,  
25 right?

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1 A Yes.  
2 Q Okay. Or transportation easement, whatever fancy term they  
3 have for it. You understand what that is, correct?  
4 A Yes.  
5 Q That once you stop using it, then it would revert back to the  
6 property owners on the property it crosses?  
7 A Yeah. I understand that.  
8 Q Okay. There have been a bunch of cases in Indiana about what  
9 the rights are, that sort of thing. You understand that?  
10 A I think -- yes, uh-huh.  
11 Q Okay. All right. Do you have an understanding of -- of what  
12 the rights are of the surrounding property owners --  
13 A (The witness shakes head from side to side.)  
14 Q -- on the Honey Creek line in Henry County?  
15 A No.  
16 Q Okay. Did you have a right-of-way contractor in 2002 remove  
17 cross bucks and crossing signals to make it safer for people  
18 to drive across the -- on the roads there?  
19 A I didn't have them do it. They did it. INDOT did it.  
20 Q INDOT did it?  
21 A Yes. They called me and asked me could they remove that  
22 because of Haz Mat traffic on -- going through there.  
23 Everybody was stopping. School bus was stopping. And we  
24 weren't using the rail.  
25 Q Okay. That would be on State Road 36, right?

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1 A On 36, yes.  
2 Q Okay. Were there any other crossings on the county roads?  
3 A No.  
4 Q Okay. Well, the rail crossed several county roads, didn't  
5 it?  
6 A Yes, it did.  
7 Q Okay. Do we need a take a break?  
8 A Just a second. No.  
9 Q Okay. Okay. And did INDOT charge you for removing the cross  
10 bucks and crossing signals?  
11 A No.  
12 Q Okay. Who is Chip Wood?  
13 A He was a manager that I had at Morristown.  
14 Q Okay. And does he still work for Morristown?  
15 A No, he does not.  
16 Q Okay. When did Chip Wood leave Morristown?  
17 A I think sometime around 2000.  
18 Q Did he go work someplace else?  
19 A Yes, he did.  
20 Q Where did he go to work?  
21 A Somewhere in Illinois. On the river.  
22 Q The Ohio or the Mississippi?  
23 A Mississippi, I think it was.  
24 Q Okay.  
25 A Or would it have been Illinois? Might have been Illinois.

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1 I'm not sure.  
2 Q He worked for a grain company?  
3 A Yes. Consolidated Grain.  
4 Q Okay. Did he have a position with the Honey Creek Railroad?  
5 A No, he didn't.  
6 Q Okay.  
7 MR. BROOKE: You want to mark that.  
8 (Exhibit 8 was marked for identification,  
9 and the following proceedings were had:)  
10 Q Let me hand you what's marked as Exhibit 8 and ask if you can  
11 identify that.  
12 (Exhibit 9 was marked for identification,  
13 and the following proceedings were had:)  
14 A What's your question?  
15 Q Well, first of all, I wanted to know if you recognize that  
16 document. That was my first question.  
17 A I recognize what it's talking about. But I don't recognize  
18 -- remember looking at it or anything. It might refresh my  
19 memory as I go through it.  
20 Q Sure. Please take your time.  
21 MR. BROOKE: As a matter of fact, why don't we go  
22 off the record to give Mr. Smith an opportunity to take a  
23 look at that document. It's several pages so that's no  
24 problem.  
25 (Thereupon, after a recess at 11:28 a.m.,

1 the following proceedings were had:)

2 THE WITNESS: What's your question?

3 MR. BROOKE: Okay. Let's go back on the record.

4 Q My question: First of all, do you recognize Document Number

5 -- I think it's 8?

6 A Yes.

7 Q All right. And, for the record, what is Document 8?

8 A Document 8 is a list of conditions and -- of the Rushville

9 line for a -- to acquire a grant to rehabilitate it.

10 Q Okay. All right. It's basically an inspection report on --

11 an inspection by an independent contractor as to the

12 condition of the Rushville line; is that an accurate

13 assessment?

14 A I would say it is, yes.

15 Q Okay. And why is this directed to Mr. Chip Wood if he didn't

16 have a position with the Honey Creek Railroad?

17 A Well, like I say, he was the grain manager there. And

18 anything comes across the desk, he saw it. And, I mean, you

19 know, we're not a huge company. We don't have a certain

20 group that sits out there in an office that's for Honey Creek

21 Railroad and another one -- you know, it's -- our group is

22 small, so to speak, you know, in respect to a big

23 corporation. And we got people doing multi-task.

24 And it just -- I mean, he was the grain manager

25 there. It came through there and he addressed it.

1 Q Okay. The consultant would have addressed it that Chip --

2 would Chip have been the one that made the arrangements for

3 the consultant to do the inspection?

4 A Not necessarily. He was the one to talk to. And Mr. Woods,

5 he would talk to me about it. And then I would say, Okay, do

6 it or don't do it.

7 Q Okay.

8 A As simple as that.

9 Q All right. In Exhibit Number 7 --

10 MR. BROOKE: And I have it right here. So I know

11 what you were looking for.

12 MR. WILSON: Oh.

13 Q Did you ever draw up a scope of work for INDOT which showed

14 the materials you planned to move between the line segments

15 -- segments and how they will be utilized on the Rush County

16 line as set forth in the last paragraph of Exhibit 7?

17 A I think so.

18 Q Okay. And would that also be there at Morristown Grain, that

19 scope of work? 'Cause INDOT didn't have it.

20 A It -- it may be.

21 Q Okay. Do you remember what that scope of work was?

22 A Probably pretty much on Exhibit 8.

23 Q Okay. Even though Exhibit 8 was done two years before that?

24 (Thereupon, after a brief interruption,

25 the following proceedings were had:)

1 A Now, what was your question again?

2 Q You said that the scope of work that was requested in -- on

3 the Page 2 of Exhibit 7 would have been the scope of work

4 that was set forth in Exhibit 8.

5 A Uh-huh.

6 Q And I said even though the scope of work -- even though

7 Exhibit 8 was created two years before Exhibit 7, would that

8 have still been the same scope of work?

9 A No. I don't think it is.

10 Q Okay.

11 A I think this was a different thing. This -- this, I believe

12 we were filing for a -- a grant to help rehabilitate the

13 line.

14 Q Okay.

15 A And this was about when I moved the -- moved the rail without

16 telling INDOT about it. And we -- then we moved the loan to

17 Rushville line.

18 Q Okay. Well, what INDOT -- in Exhibit 7 what INDOT is asking

19 for, as I read it, it will help us both to see the property

20 -- in the meantime, please begin to draw up a scope of work,

21 including material quantities and dollar values, which show

22 the material you plan to move between line segments and how

23 they will be utilized on the Rush County line. See that

24 sentence?

25 A Uh-huh.

1 Q Okay. My question was: Did you do that? Did you prepare

2 that for INDOT?

3 A I can't remember. We surely would have but I can't remember.

4 Q Okay. 'Cause I looked -- INDOT didn't have that. So's

5 that's why I was asking you if you had it.

6 MR. WILSON: John, let's go off the record for a

7 minute.

8 MR. BROOKE: Okay.

9 (Thereupon, after an off-the-record discussion,

10 the following proceedings were had:)

11 MR. BROOKE: Let's go back on record. We'll just

12 talk about that so that we have a clear record.

13 The scope of work that's referenced in Exhibit

14 Number 7 may exist in the supplemental loan documents to

15 INDOT that are dated September 22nd, 2002, the scope of work,

16 the quantities being moved. And I don't think I brought

17 those -- that supplemental loan document with me.

18 Mr. Wilson thinks it may have been in that. I

19 don't recall seeing it. But there have been an awful lot

20 of paper in this so it's entirely possible that I overlooked

21 it.

22 MR. WILSON: I think it's Attachment A to the

23 Supplemental Loan Agreement Number 1.

24 MR. BROOKE: If you can just --

25 MR. WILSON: Is that what you're looking for?

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1 MR. BROOKE: Oh, okay. Yeah, okay. Now I see  
2 this. But I didn't know exactly what it -- it was all messed  
3 up in mine.  
4 MR. WILSON: Yeah. Well, it was a little messed up  
5 in mine as well.  
6 MR. BROOKE: Yeah. 'Cause I didn't know where --  
7 what attach --  
8 MR. WILSON: -- which attachment it came to.  
9 MR. BROOKE: Right, yeah.  
10 Okay. For the purpose of the record then, this  
11 Attachment A shows 1,880 six-inch by eight-inch by eight-foot  
12 six-inch cross ties, four railroad rails, relay rail,  
13 100-pound PS rail, sixteen pairs of bars, relay bars,  
14 100-pound PS bars, 300 net tons of railroad ballast, and all  
15 other rail materials and equipment used for rehabilitation  
16 for the Honey Creek line in Rushville. These are transferred  
17 -- originally installed on Sulphur Springs line and are now  
18 moved and reinstalled on the Rush County line.  
19 Okay. All right. So we have an identification of  
20 what was taken -- at least what that list was from Sulphur  
21 Springs to Rushville, correct?  
22 MR. WILSON: Yeah. That looks like it.  
23 Although --  
24 MR. BROOKE: It doesn't talk about the rails  
25 though.

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1 MR. WILSON: Well, it only -- it only shows four  
2 railroad rails, relay rails. So that doesn't sound like  
3 enough rail to me. Does it to you, Bill?  
4 THE WITNESS: No. I don't know what that would  
5 have been about.  
6 Q Would that have been in addition to what you'd already  
7 removed and replaced down there? I think that's what the  
8 letter was calling for.  
9 A Sixteen pair of bars.  
10 MR. WILSON: That's not rail.  
11 THE WITNESS: No. That's not rail. I don't know  
12 what that is.  
13 MR. WILSON: Well, we'll have to -- that may not  
14 answer the question adequately.  
15 MR. BROOKE: Okay. All right. Okay. Well, we  
16 have the record of what -- now I know what that attachment is  
17 so -- and I know where it goes to. Okay, good.  
18 Q Let's go to Exhibit Number 8.  
19 A Okay.  
20 Q That was for a grant for the Rushville line. Did you also  
21 make a grant for the Henry County line, same grant to  
22 rehabilitate that?  
23 A I don't think so.  
24 Q Okay. And is there a reason why not?  
25 A Because be hard to get two grants. And I think the Rushville

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1 line was in the worst condition. I know it was in the worst  
2 condition.  
3 Q Okay. I want to go back. And I meant to ask this question  
4 earlier and I apologize. We'll go back to the revenues. The  
5 revenues being reported, this is the \$35 a car, fully loaded  
6 grain that is -- either Norfolk Southern or CSX is paying  
7 you, correct? That's what they're --  
8 A Yes.  
9 Q Or are there other sources of revenue --  
10 A No.  
11 Q -- besides that for Honey Creek?  
12 A No.  
13 Q Okay. CSX pay --  
14 MR. BROOKE: I'm sorry.  
15 MR. WILSON: Let's be clear. Do you get \$35 a car  
16 from CSX or just -- did you just get it from NS? I mean, you  
17 could have had different rate relationships.  
18 THE WITNESS: Yes. I got it from both of them for  
19 a while.  
20 MR. WILSON: Okay.  
21 THE WITNESS: They --  
22 MR. WILSON: But it's not a case -- the point I'm  
23 trying -- the point I'm making is you can't take \$35 a car  
24 and divide it into the revenues and come up with carloads or  
25 something like that.

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1 THE WITNESS: That's right. Yes.  
2 MR. BROOKE: All right. Well, that's why I was --  
3 misunderstood then.  
4 Q Was there a different rate for CSX or different -- was there  
5 a different rate for CSX first?  
6 A No. They were both \$35.  
7 Q Okay. Were there different rates at different times of the  
8 year?  
9 A I don't think so.  
10 Q Okay. All right.  
11 A They both finally discontinued that though.  
12 Q Okay. When did they discontinue that?  
13 A Oh, shoot. I don't know. Seems like forever.  
14 Q Okay. Let me ask you this question then: Were there other  
15 sources of revenue for the Honey Creek Railroad besides these  
16 railcars to the railroads?  
17 A No.  
18 Q Okay. So if you're reporting \$84,000 in transportation  
19 revenue in the fourth quarter of 2005, then they would have  
20 been doing -- at least CSX and Norfolk Southern would have  
21 been paying Honey Creek at least in 2005, correct?  
22 A No.  
23 Q Okay. Then what would have been the source of transportation  
24 revenue in 2000 -- fourth quarter of 2005?  
25 A Morristown Grain pays Honey Creek Railroad just to keep them

1 ofloat.  
 2 Q Okay. All right.  
 3 A Unfortunately.  
 4 Q So sometime in -- at sometime then Honey Creek started  
 5 billing to Morristown Grain for the railcars?  
 6 A Yes. We have to have some money to keep that line going.  
 7 Q Okay. And what's that money then used for?  
 8 A Fuel.  
 9 Q For the locomotive?  
 10 A Yeah, for the locomotive. Labor, maintenance for the engine,  
 11 ties, spikes, ballasts.  
 12 Q Okay. Does the Rushville line operate two locomotives now?  
 13 A No. We have one locomotive at Morristown and one at  
 14 Rushville.  
 15 Q Okay. All right. So the locomotive that you had for Sulphur  
 16 Springs you moved to Morristown?  
 17 A Morristown, yes.  
 18 Q Okay. All right. Do you own that rail line there at  
 19 Morristown too?  
 20 A I own all the spurs. There's ninety cars of spur in there.  
 21 See, we're on the -- we're directly on the CSX at that point.  
 22 Q Oh, at Morristown?  
 23 A Yes.  
 24 Q Okay.  
 25 A But we use that engine for switching on our -- on our inner

1 side.  
 2 Q Okay. So you have some side rails there for the elevator to  
 3 load the grain cars?  
 4 A Yes.  
 5 Q Okay. And your engine is used to move those around?  
 6 A Yes.  
 7 Q Okay. And so Morristown Grain in Rushville and in Morristown  
 8 pays to Honey Creek now for the rail operations?  
 9 A Yes.  
 10 Q Okay. All right. And now I guess that leads me back to my  
 11 question which I started a while ago was: When did they stop  
 12 paying you \$35 a car?  
 13 A I think it was something around 2000 on Rushville. And  
 14 course -- of course the elevator collapsed in Sulphur Springs  
 15 in latter part of 1999. So it had to have been at least that  
 16 far back for -- 'cause we wouldn't have run any cars after  
 17 the collapse of the elevator.  
 18 Q But were they paying you, before the elevator collapsed, \$35  
 19 a car?  
 20 A I think they were, yes.  
 21 Q Okay. Okay. So the Henry County line stopped when the  
 22 elevator collapsed, but there -- at least they were still  
 23 paying you, up until that time for the Henry County line, \$35  
 24 a car?  
 25 A I think they were.

1 Q Okay.  
 2 A I'm not positive about that but I think they were. I don't  
 3 know why they wouldn't have been.  
 4 Q Okay. Okay. So the transportation revenue then for the  
 5 Honey Creek Railroad at some point would have just been paid  
 6 by Morristown to cover the expenses?  
 7 A Correct.  
 8 Q Okay. All right. But there wouldn't have been any revenue  
 9 for the Sulphur Springs line after the elevator collapsed,  
 10 right?  
 11 A No. That's correct.  
 12 Q Okay. Okay. Now, you started -- on the Honey Creek line you  
 13 started the abandonment process in 2004; did you not?  
 14 MR. WILSON: I can stipulate that that's the case.  
 15 MR. BROOKE: Okay. All right. I just want to make  
 16 sure. All right.  
 17 Q And you -- you'd already told me you'd had some discussions  
 18 with INDOT in 2002 about abandonment. And can you tell me  
 19 the reason for the delay between 2002 and 2004 when you  
 20 actually started the abandonment process?  
 21 A I have no idea why.  
 22 Q Did you ever make an inspection of the -- the line in Henry  
 23 County and find out that some of the lines had been -- some  
 24 of the rails had been poked over at different road crossings?  
 25 A No.

1 Q Okay. All right. First of all, I want to hand you Exhibit  
 2 Number 9 and ask if you can identify that document?  
 3 A What's your question?  
 4 Q Well, first of all, can you tell me what that document is?  
 5 What is Exhibit Number 9?  
 6 A No.  
 7 Q Okay. It's entitled a Shortline Marketing Profile on the  
 8 Honey Creek Railroad. Looks like it came from -- Mr. Wilson  
 9 sent it to us.  
 10 MR. WILSON: Yeah.  
 11 Q Came from Norfolk Southern's records.  
 12 A I don't remember seeing it as far as that goes.  
 13 Q Okay. That's not a record that existed in your files?  
 14 MR. WILSON: No, it was not.  
 15 MR. BROOKE: Okay. Did it come from Norfolk  
 16 Southern.  
 17 MR. WILSON: Yes, it did come from Norfolk  
 18 Southern.  
 19 MR. BROOKE: Okay. Do they have other records?  
 20 Because they won't respond to us.  
 21 MR. WILSON: I don't know. This -- I asked -- I  
 22 asked my contacts there if they had any documentation. And  
 23 he said, Probably not. And he sent out an e-mail internally,  
 24 and this is what came back. And so that's -- he said that is  
 25 probably all they have. So --

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1 MR. BROOKE: Okay.  
2 MR. WILSON: That wouldn't surprise me given the  
3 length of time. They purge their files on a pretty regular  
4 basis from what I understand.  
5 MR. BROOKE: Well, we sent a request to them. And  
6 they -- got a rather terse letter back from whoever it is at  
7 Norfolk Southern saying that they're not going to give us any  
8 information. So --  
9 MR. WILSON: Well, you have to file a motion to  
10 compel with the Board then. Fortunately maybe this  
11 forestalls that.  
12 MR. BROOKE: Well, I'm just curious as to -- all of  
13 a sudden out of the goodness of their heart they come up with  
14 information. So you have better contacts, I guess, than we  
15 did.  
16 MR. WILSON: Well, I have some people that I've  
17 dealt with down there on previous occasions.  
18 (Exhibits 10 through 21 were marked for  
19 identification, and after a brief recess at  
20 11:45 a.m., the following proceedings were had:)  
21 Q Let me hand you a series of photographs, photocopies of  
22 photographs, actually, marked Exhibits 10 through --  
23 THE COURT REPORTER: Twenty-one.  
24 Q -- 21. I'm going to ask you about each one of those. First  
25 of all, Exhibit 10. Do you recognize that?

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1 A Yes.  
2 Q Okay. And do you recognize that as rails that are piled up  
3 at the elevator there in Sulfur Springs?  
4 A Yes.  
5 Q Okay. Do you know if those rails are still there?  
6 A Yes, they are.  
7 Q Okay. Okay. Let's go to Exhibit Number 11.  
8 MR. WILSON: Just -- just a minute.  
9 MR. BROOKE: Woods.  
10 MR. WILSON: There's a caption on this exhibit  
11 that's handwritten that says, Rail and spikes piled by old  
12 mill most likely removed from road in front of mill.  
13 MR. BROOKE: That's my handwriting or my office --  
14 MR. WILSON: Is that part of the exhibit or --  
15 or --  
16 MR. BROOKE: No. We're just talking about the  
17 photograph.  
18 MR. WILSON: Okay, fine. Just --  
19 MR. BROOKE: All right.  
20 MR. WILSON: -- with that specification.  
21 MR. BROOKE: Okay.  
22 MR. WILSON: I don't want to mischaracterize  
23 this --  
24 MR. BROOKE: Sure.  
25 MR. WILSON: -- In the record for future -- for

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1 future purposes.  
2 MR. BROOKE: Right, absolutely. And I say -- I  
3 will -- that's -- that's a good question.  
4 MR. WILSON: You can follow up with questions on  
5 that type of thing but --  
6 MR. BROOKE: Yeah. There is a -- and I'll do that  
7 right now.  
8 Q There is a caption. And does that caption accurately reflect  
9 what's in the photograph?  
10 A No, it doesn't.  
11 Q Okay. Where did those rails come from?  
12 A They come from just west of the -- what I call, I guess, west  
13 of the -- beyond the elevator.  
14 Q Okay. That's the extra rails that we talked about earlier  
15 that you had taken up that were beyond the elevator?  
16 A Yep. Yep. And those spikes was from down that direction  
17 also.  
18 Q Okay. All right.  
19 A Those spikes have been there for a good while.  
20 Q Okay. Let's go to 11. All right? Do you recognize that  
21 photo?  
22 A Yes.  
23 Q Okay. And for the purposes of the record, what is that  
24 photo?  
25 A That is some of the load-out spouts that used to go to the --

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1 to the rail.  
2 Q Okay. All right. And is that looking -- there's a caption  
3 that says, Looking north from Highway 36. Would that caption  
4 be accurate? More or less north?  
5 A If you're north looking at it, at this?  
6 Q Yes.  
7 A Yes.  
8 Q Okay. And there are no rails in front of the -- that are  
9 depicted in that photograph, are there?  
10 A There's -- yes. There's one or two down there.  
11 Q Okay.  
12 A Down in here (indicating).  
13 Q Okay. Would you circle where the rails are for me, please.  
14 A (Witness complies). Down in this way here.  
15 Q Okay. Are they rails that are in the ground or --  
16 A They're there.  
17 Q They're there? Okay. Any rails south of that?  
18 A Yes.  
19 Q Talking about in this area here.  
20 A That's south?  
21 Q Yes.  
22 A I call that north.  
23 Q Well, this is north. If you're here -- this is Highway 36  
24 looking north. So this would be south, right?  
25 A I don't never see it that way. But, like I say, I get turned

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1 around. I need a compass when I'm up there --  
2 Q Okay.  
3 A -- 'cause whenever I think I'm going -- I'm going north on 3,  
4 I go to Mount Summit and I come back and look back, it still  
5 looks north me.  
6 Q Okay. Let's talk about at the bottom of the picture then.  
7 A Okay.  
8 Q Any rails towards the bottom of the picture?  
9 A I don't see any.  
10 Q Okay. All right.  
11 (Thereupon, after an off-the-record discussion,  
12 the following proceedings were had:)  
13 MR. BROOKE: I think these were taken in 2005.  
14 Q Do you remember removing rails in front of the elevator there  
15 in Sulphur Springs?  
16 A Yeah. We did some of it there, yes.  
17 Q Okay. And do you know when that was?  
18 A I'd say probably two or three years ago.  
19 Q Okay. Before you started the abandonment process -- the  
20 paperwork with the STB?  
21 A Well, I couldn't tell you that.  
22 Q Okay. All right. Let's go to Exhibit 12. All right. Do  
23 you recognize that photograph?  
24 A Yes.  
25 Q Okay. Exhibit 12 has a caption also, Looking south from

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1 Highway 30 -- from Highway 36, State Highway Department  
2 removed rails and paved over right of way. Is that an  
3 accurate --  
4 A Yes.  
5 Q -- depiction?  
6 A Yes.  
7 Q And that's the crossing that we were talking about earlier  
8 that the INDOT removed --  
9 A Uh-huh.  
10 Q -- on State Road 36?  
11 A Uh-huh.  
12 Q Okay. But you don't recall exactly when that was?  
13 A No, I don't. They should have a copy of that --  
14 Q Okay.  
15 A -- record of that.  
16 Q All right. Let's go to exhibit or Number 13.  
17 A Okay.  
18 Q All right. Do you recognize that?  
19 A It's just about like 12.  
20 Q Okay. And the caption is, Looking south from -- from 36.  
21 That would be accurate, correct? It's the same depiction as  
22 12.  
23 A So you're saying if you're standing on the elevator side of  
24 the road you're looking south?  
25 Q Yes.

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1 A Whatever you say.  
2 Q Okay. Okay. Go to 14.  
3 MR. WILSON: Just a moment. Okay.  
4 MR. BROOKE: Okay.  
5 Q Number 14. Do you recognize that?  
6 A No.  
7 Q Okay.  
8 A It says here something about 200 West. It says first of all  
9 south, then it says north. So maybe I wrote that.  
10 Q Might have been. Looking north from County Road 200 West,  
11 this is the general condition of the entire right of way.  
12 Now, we can take out the second sentence. But do you  
13 recognize --  
14 A Can you show me --  
15 Q -- the rail from 200 West?  
16 A Do you have a map to show me where 200 West is?  
17 MR. WILSON: Can I -- can I cross this second --  
18 MR. BROOKE: Sure. That's fine.  
19 Q If I'm not mistaken, I think -- let's see. This is 200 West  
20 right here.  
21 A I'm assuming it's -- it's a right of way.  
22 Q Well, that was -- yeah, that's the photograph. Must be a  
23 better time of year to take those but --  
24 A Uh-huh. Okay. Now where are you saying it is?  
25 Q I think it's right here. 'Cause west roads would run north

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1 and south.  
2 A Okay. So if you're going back toward Mount Summit out of  
3 Sulphur Springs, would it be the very first driveway or --  
4 Q First county road?  
5 A First county road. I'd have to see it.  
6 Q Okay. Well, let's go to the next one then. This is Exhibit  
7 Number 15. The caption is, Looking south from County  
8 Road 200 West, County Highway paved over right of way rails.  
9 Do you see where the roadway is in that county road?  
10 A Uh-huh.  
11 Q Right here (indicating)?  
12 A Yep.  
13 Q All right. And that would be on the same county road, County  
14 Road 200 West, where the highway -- where the road -- there  
15 aren't any rails in the road that you can see. Look like  
16 they've been paved over. Do you recall that?  
17 A No.  
18 Q Okay. Have you driven out there and seen where the county  
19 road may have been paved over the rails?  
20 A I've been out through there, but I haven't paid any attention  
21 to that.  
22 Q Okay. All right. Let's go to 16 then. Looking north,  
23 County Road 400 North, County Highway Department paved over  
24 this crossing. 400 North would be right here (indicating).  
25 Q Okay. Do you recognize that?

1 A No.  
2 Q Okay. You haven't seen the roads paved over the rails?  
3 A No.  
4 Q Okay. Let's go to 17. Looking north on County Road  
5 125 West, Highway -- Highway Department paved over rails.  
6 That would be this one right here (indicating). Do you  
7 recognize that?  
8 A No.  
9 Q Okay. You don't know if they've paved over there on  
10 125 West?  
11 A No. No, I do not.  
12 Q Okay. Exhibit 18. Another view of right of way looking  
13 north, County Road 125 West. You don't recognize that,  
14 correct?  
15 A Yes, I do.  
16 Q That gonna' be right here on Exhibit --  
17 A Yes, I do.  
18 Q You --  
19 A This one (indicating).  
20 Q This one?  
21 A This one? No. I do not I recognize that.  
22 Q Okay.  
23 A I recognize this (indicating).  
24 Q Okay. All right. Exhibit 19. This section runs along 300  
25 north. The track evidently continued to the Norfolk Southern

1 main line for rail car interchange. The rail was pulled up  
2 by -- and then there's a question mark -- by the Norfolk  
3 Southern track crew or another rail company.  
4 Okay. Do you recognize -- you do recognize what's  
5 contained in Exhibit 19, correct?  
6 A Yes.  
7 Q And this would have been the rail that you pulled up and took  
8 to Rushville, correct?  
9 A That's correct.  
10 Q So it wasn't pulled up by Norfolk Southern crew, was it?  
11 A No.  
12 Q Okay. That would be down here towards the terminus or end of  
13 the line, correct (indicating)?  
14 A Uh-huh.  
15 Q All right. Exhibit Number 20, do you recognize that?  
16 A No.  
17 Q Do you know what it is -- what it depicts?  
18 A No.  
19 Q Does it look like railroad ties piled up?  
20 A Yeah, it does.  
21 Q Okay. You don't know if you have a pile of railroad ties  
22 along there where the track came up?  
23 A I don't know where you're talking about. I don't recognize  
24 that pile of ties.  
25 Q Okay. All right. Let's go to 21.

1 A Okay.  
2 Q Do you recognize 21?  
3 A Yes. That's State Road 3 overpass.  
4 Q Okay. And that's where rails were also removed, correct?  
5 A Right.  
6 Q That's part of that two miles that you took to Rushville?  
7 A Correct.  
8 Q All right. Okay. All right.  
9 Going back to the revenues, do you have an idea of  
10 how much each the Rushville and the -- and the Sulphur  
11 Springs line contributed to the overall revenue of Honey  
12 Creek Railroad?  
13 A Rushville is a lot larger elevator than Sulphur Springs.  
14 They're on two separate -- the NS that -- we loaded fifty car  
15 trains up there, fifty cars at a time. And on the Rushville  
16 line we load sixty-five cars at a time. It's called unit  
17 trains.  
18 Q Okay. So would Rushville -- I know that there was a --  
19 Rushville was about -- more than twice as big as Sulphur  
20 Springs in size of quantity.  
21 A About two-and-a-half times, yes.  
22 Q Two-and-a-half times. So would that be a fair percentage of  
23 the revenue?  
24 A Yes.  
25 Q Rushville would be about two-and-a-half times what Sulphur

1 Springs was?  
2 A Yes.  
3 Q Okay. So two thirds, one third?  
4 A Yes. Might have been three fourths, one fourth.  
5 Q Three fourths, one fourth would be two-and-a-half times.  
6 A 'Cause we had fifty cars versus --  
7 Q Okay. Okay. I have some questions here based on the -- the  
8 Responses to Requests for Production of Documents Number 6.  
9 Request Number 4 --  
10 MR. WILSON: Woops. Sorry.  
11 Q -- asks for -- get it out here. Produce all documents  
12 discussing or referring to the abandonment of the Honey Creek  
13 line including, without limitation, consequences of  
14 abandonment for the property rights of land owners abutting  
15 or underlying the Honey Creek line. Do you have any  
16 documents? 'Cause none were produced.  
17 A Say that again, please. What --  
18 Q I'm sorry?  
19 A What are you asking for now?  
20 Q I want to know if there are any documents discussing or  
21 referring to the abandonment of the Honey Creek line  
22 concerning the consequences for abandonment of the property  
23 rights of land owners abutting or underlying the Henry County  
24 line. And you objected on the basis it was ambiguous and  
25 vague. May get into the attorney/client privilege.

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1 But there was only -- see all STB decisions and  
2 abandonment docket, the Indiana statutes relating -- I want  
3 to know if you have any documents themselves.  
4 A No. I don't have any.  
5 Q Have you done any title work on that?  
6 A No.  
7 Q Have you asked for any title opinions?  
8 A No. Not that I know of.  
9 Q Okay. Any -- any research done by any person to determine  
10 what the rights of the adjoining or abutting property owners  
11 are?  
12 A Who they are?  
13 Q No. As to what their rights are. When you abandon this  
14 property, do you know what their rights are?  
15 A I don't know that they have any rights.  
16 Q Okay.  
17 A Or either way, I don't know. We talked about that earlier.  
18 Q Right. I want to know if there are any documents that  
19 support that.  
20 A I don't have any.  
21 Q Okay. 'Cause there's other documents out there that indicate  
22 that you believe that they have a reversionary right, in  
23 essence that the land reverts to them once you abandon it.  
24 A I believe that?  
25 Q Yes.

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1 A No, I don't.  
2 Q You don't believe that?  
3 A No.  
4 Q You believe that you own the land free -- fee simple  
5 absolute? You know what that means? I mean, that's a legal  
6 term so --  
7 A Yeah.  
8 Q You own the land outright?  
9 MR. WILSON: I'm going to object at this point.  
10 These are legal conclusions that may involve attorney/client  
11 privilege. But I think our objection is stated here. If you  
12 disagree with this, you have a procedural availability to go  
13 to the STB, state your reasons why this is an inadequate  
14 answer and ask them to issue a motion to compel.  
15 MR. BROOKE: Well, I'm trying to find out, first of  
16 all, if there are any documents that haven't been produced.  
17 Because we've already -- may have indicated that there have  
18 been documents that haven't been produced that you're going  
19 to make a good-faith effort and go back and look and see,  
20 particularly the maintenance records. And I'm trying to find  
21 out if there are any documents that exist other than -- at  
22 this point other than what are classified as attorney/client  
23 privilege.  
24 MR. WILSON: If you're excluding attorney/client  
25 privilege documents --

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1 MR. BROOKE: Yes.  
2 MR. WILSON: -- then you can go ahead and answer  
3 the question, if you can, as to any other title reports or,  
4 you know, that type of thing.  
5 THE WITNESS: I don't know of any.  
6 MR. BROOKE: Okay.  
7 Q And I guess then my next question is -- and I don't know what  
8 -- I don't know what they are. I don't want know what they  
9 are, but are there documents which would be covered by the  
10 attorney/client privilege which exist?  
11 A I don't know that either.  
12 Q Okay. All right. Okay. Number 5 -- response Number 5, the  
13 question was: Please produce all documents discussing or  
14 referring to your decision to file for de jure abandonment  
15 pursuant -- or abandonment authority for the HCR line when  
16 you filed for authority in all documents and discussing or  
17 referring to the decision to not file for de jure abandonment  
18 authority prior to that time. And your objection is that the  
19 documents, if any they exist, are covered by attorney/client  
20 privilege.  
21 I want to know if there are any documents, first of  
22 all, that are not covered by the attorney/client privilege.  
23 A I have no idea.  
24 Q Okay. Do you have any documents at all that you discussed  
25 with anybody, other than your attorney, about the decision to

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1 file abandonment?  
2 A No, I don't have. I don't have a file on anything like that.  
3 Q Okay. All your discussions with abandonment then would have  
4 been done with your attorney?  
5 A I'm -- I don't know. I can't remember any other things.  
6 Q Okay. Well, tell me about the decision then to file for  
7 abandonment. How did that take place? Do you understand the  
8 question?  
9 A I understand the question. I'm trying to remember --  
10 Q Okay.  
11 A I'm trying to remember --  
12 Q Okay.  
13 A -- what took place.  
14 Q Okay. I just wanted -- I just wanted to know if you  
15 understood the question so -- how did that whole process  
16 start? What -- what did you do? What -- who did you talk  
17 to, that sort of stuff?  
18 A I can't remember any names or anything about it. I'll tell  
19 you, this isn't all I got to do in my everyday job -- job  
20 description. I mean, this is the least of importance to me.  
21 Q Okay. Why did you start the process for abandonment?  
22 A I don't remember. I don't -- I don't have any idea why. I  
23 mean, I know there's a reason. But I don't know when I  
24 started it or if I started it or how I started it.  
25 Q Okay.

1 A Somebody told me I needed to or what, I don't know. I can't  
 2 -- that's old business to me.  
 3 Q Do you know why you would have started it in 2004 rather than  
 4 late 1999 when the elevator collapsed?  
 5 A I was probably busy cleaning up the elevator, I'd say.  
 6 Q Okay. All right. But that didn't take you four years or so,  
 7 did it?  
 8 A Well, the elevator's still up there too, and I haven't done  
 9 anything with it. I mean, you know, like I say, that's --  
 10 I've got more important things to do than just worry about  
 11 that elevator sitting up there. It don't bother me any at  
 12 all that it's sitting there.  
 13 Q Okay.  
 14 A And the rail hadn't been a concern either until lately so --  
 15 Q Okay. What had made the rail a concern lately?  
 16 A Whenever somebody stole a mile of it.  
 17 Q Okay.  
 18 A So it made it kind of a concern. I thought it was secure on  
 19 my property and -- and found out it wasn't.  
 20 Q Okay. Well, I want to know why -- what was the process for  
 21 why the abandonment started in 2004 before this alleged  
 22 theft?  
 23 A I don't know.  
 24 Q Okay. How did you find out about this alleged theft?  
 25 A A neighbor there called me and told me it was happening.

1 Q Okay. Do you know which neighbor it was?  
 2 A I don't know his name. I know where he lives.  
 3 Q Okay. Where does he live?  
 4 A First -- the first driveway that goes back toward Mount  
 5 Summit just right out of Sulphur Springs to your right. And  
 6 then there's a lane goes there and over the track. And I  
 7 understand that Roberts owns property back there.  
 8 But, anyway, this house is just immediately off of  
 9 36. It's an old stucco house.  
 10 Q Look at Exhibit 3. It's a house off of 36 --  
 11 A Yes.  
 12 Q -- towards Mount Summit?  
 13 A Yes.  
 14 Q Okay. And it's the first one past Sulphur Springs?  
 15 A Yes. It would be, I think, the last one that goes out this  
 16 way (indicating).  
 17 Q Okay. To the -- to the north then? This is north.  
 18 A Okay. It goes back toward Mount Summit.  
 19 Q Okay.  
 20 A Be right in here somewhere.  
 21 Q All right. On the south side of 36. You've got to go over  
 22 the -- you've got to --  
 23 A Yep.  
 24 Q -- go back a lane over the railroad track to --  
 25 A Yeah.

1 Q -- to his house?  
 2 A It goes right behind his house.  
 3 Q Okay. The track goes behind his house?  
 4 A Yes.  
 5 Q Okay.  
 6 A He's kind of wedged in there between 36 and the railroad.  
 7 Q Okay. Okay. But you can't -- you can't think of what caused  
 8 you or what processes you did to start the process for  
 9 abandonment then?  
 10 A No.  
 11 Q You don't know why you started the process for abandonment?  
 12 A No.  
 13 Q Do you use e-mail?  
 14 A Not a whole a lot. I mean, we do at the elevator. But I  
 15 don't personally.  
 16 Q Okay.  
 17 A My wife does.  
 18 Q Okay. What -- did you check -- when you made this response  
 19 were the e-mail records checked? When you responded for the  
 20 Honey Creek Railroad here in these Requests for Production of  
 21 Documents, did you check the e-mail?  
 22 A No, I didn't.  
 23 Q Okay. Who would have done that?  
 24 A I don't know.  
 25 Q Okay. Who -- who gathered up these records that we have or

1 these scant amount of records that we have here?  
 2 A I don't know. Somebody at the office at Rushville I'd say or  
 3 Keaton.  
 4 Q Okay. Request Number 6 asks for -- produce all documents  
 5 constituting, discussing or referring to communications with  
 6 Indiana Department of Transportation. And I don't think that  
 7 you produced anything in that. Do you not have records of  
 8 communication with INDOT about the Honey Creek Railroad?  
 9 A I don't know. I'm not in charge of that file. I don't  
 10 know. I haven't looked at it, if there is any.  
 11 Q Okay.  
 12 MR. BROOKE: Well, we'd like the same request, that  
 13 the examination of the records for the -- there's got to be  
 14 some correspondence with INDOT, I would venture to guess.  
 15 But --  
 16 MR. WILSON: Maybe not at this time. We'll see.  
 17 THE WITNESS: Maybe not.  
 18 Q On Number 13 we requested all documents discussing, referring  
 19 or relating to the existence of or the elimination of any and  
 20 all connections between Honey Creek Railroad line and  
 21 Interstate Rail System, which I guess would be Norfolk  
 22 Southern. And you said there are no records to that.  
 23 There's no communication other than what was produced --  
 24 MR. WILSON: From Norfolk Southern.  
 25 Q -- from Norfolk Southern. You don't have any records as for

1 as you know?  
 2 A As far as I know.  
 3 Q Okay.  
 4 MR. BROOKE: I guess we would like to know --  
 5 examination of that as well.  
 6 Q Were there any ever any -- ever any accidents on the Sulphur  
 7 Springs line?  
 8 A Seems like there was somebody but I can't -- for sure. I  
 9 know there was one on Rush -- Rushville line. I can't say.  
 10 Q Okay. If there would have been an accident, would that have  
 11 been reported to somebody?  
 12 A I'm sure it would have been.  
 13 Q Who would it have been reported to?  
 14 A Probably the Sheriff's Department, I would say, or somebody  
 15 like that.  
 16 Q Okay. What about -- does INDOT require reports of accidents?  
 17 A I have no idea.  
 18 Q Okay. Who at Honey Creek would know that? Maybe I don't  
 19 have the right person here to answer some of these questions  
 20 for the Honey Creek Railroad.  
 21 A Maybe you don't.  
 22 Q Well, that's what I'm trying -- trying to find out.  
 23 I guess my question then is: Who at Honey Creek  
 24 would -- may have the answer to some of these questions?  
 25 A I don't know if anybody does or not.

1 Q Okay. Would Linda Starrett know some of these?  
 2 A She might; I don't know.  
 3 Q Okay.  
 4 A She's got any paperwork. She's -- she's just recovering from  
 5 cancer. She's had six treatments of chemo.  
 6 Q I know. That was part of the reason why some of these were  
 7 delayed.  
 8 A Was it?  
 9 Q Yep. Somebody in your office had -- was undergoing cancer  
 10 treatment. So I presume --  
 11 A It's her. She's the one that's in charge of it.  
 12 Q Okay.  
 13 A Doing all the accounting for it.  
 14 Q Okay. After Chip Wood who were the grain managers?  
 15 A Let me think. Howard Anderson. He since went to Heinz  
 16 Ketchup up east. And John Rogers. He's in northwest Iowa.  
 17 That's it.  
 18 Q Oh, who's the current one?  
 19 A Russ Hinshaw.  
 20 Q Okay. Did Mr. Wood leave to get a better job?  
 21 A They always think so.  
 22 Q Okay.  
 23 A He's called wanting to come back, but he thought he had a  
 24 better.  
 25 Q I understand that. The grass is always greener?

1 A Yep.  
 2 Q Did you have any connection agreements with Norfolk Southern  
 3 for this line?  
 4 A What do you mean connections or agreements?  
 5 Q Well, agreements that allowed you to connect or put cars on  
 6 the Norfolk Southern, I guess.  
 7 A Well, they -- they -- they came onto our line; we didn't go  
 8 onto theirs. They don't allow anybody onto theirs.  
 9 Q Okay. Did you have a connection agreement with Norfolk  
 10 Southern for your line?  
 11 A I'm sure we did have. But I don't know -- I don't know what  
 12 it consisted of or where it's at.  
 13 Q Okay.  
 14 MR. WILSON: That would be part of the records  
 15 we'll be looking for.  
 16 MR. BROOKE: Okay.  
 17 MR. WILSON: Let me -- let me go offer the record  
 18 here.  
 19 (Thereupon, after an off-the-record discussion,  
 20 the following proceedings were had:)  
 21 Q Other than the loan from INDOT, did Honey Creek borrow money  
 22 from anybody else for operations, maintenance, purchase of  
 23 this rail line in -- in Sulfur Springs?  
 24 A No.  
 25 Q Okay. Do you have any business plans relating to the Sulphur

1 Springs line?  
 2 A No.  
 3 Q And going to Exhibit Number 5, Interrogatory Number 8.  
 4 MR. BROOKE: And I put that in front of the  
 5 witness.  
 6 MR. WILSON: Oh, I thought you were referring to  
 7 one here earlier.  
 8 MR. BROOKE: No. I handed it --  
 9 Q You say the switch was removed by Norfolk Southern?  
 10 A Yes.  
 11 Q All right. Were there any other switches on this line  
 12 besides that one?  
 13 A In -- in what respect? To go where?  
 14 Q Well, to go anywhere.  
 15 A Yes.  
 16 Q Okay. Where were the other switches?  
 17 A There was -- one was in this part of the -- the rail that got  
 18 taken up.  
 19 Q Okay.  
 20 A I mean, in the -- Mr. Roberts took it up.  
 21 Q Okay. Where was the switch? Where did it go to?  
 22 A It was a -- it was a runaround track. There was some double  
 23 track in there. And it was a number ten, 140-pound switch  
 24 which had just been reworked. We had rebuilt it,  
 25 reconstructed.

1 Q When was that reconstructed?  
 2 A Just prior to whenever I acquired it from Conrail.  
 3 Q Do you have any documents to evidence that, to show that?  
 4 A Outside of the -- the switch itself, you can tell it's just  
 5 been reworked.  
 6 Q Well, I mean, do you have any documents showing that the  
 7 switch, first of all, existed?  
 8 A Yes.  
 9 Q Okay. What documents --  
 10 A I don't have documents -- well, yes, I do have too. It's on  
 11 the maps. It should be.  
 12 MR. WILSON: I don't see it on those.  
 13 THE WITNESS: I don't see it on those. But it's on  
 14 the maps.  
 15 Q Which maps would it be on?  
 16 MR. WILSON: Is this what you're thinking of? Is  
 17 this the maps you're thinking of?  
 18 THE WITNESS: Yep.  
 19 MR. WILSON: On the deed?  
 20 THE WITNESS: I think so.  
 21 MR. WILSON: You might want to take a look at that  
 22 and see if you can pick that out.  
 23 Assume that's just the beginning. This would be  
 24 down in New Castle, out the line. Here's -- looks to me like  
 25 there's double track through there (indicating).

1 THE WITNESS: Uh-huh.  
 2 MR. WILSON: Though it's hard to --  
 3 THE WITNESS: Okay. Going down to Sulphur Springs  
 4 toward -- toward Mount Summit.  
 5 MR. WILSON: Mount Summit is east. Here's Sulfur  
 6 -- is this Sulphur Springs here (indicating)?  
 7 THE WITNESS: Uh-huh.  
 8 MR. BROOKE: Yip.  
 9 THE WITNESS: That's me.  
 10 MR. WILSON: Okay. And then this would be  
 11 continuing west beyond Sulphur Springs.  
 12 MR. BROOKE: Up here.  
 13 MR. WILSON: Yeah. Out to the end of the line here  
 14 (indicating).  
 15 THE WITNESS: That's the wrong way. We need to go  
 16 back -- go back toward State Road 3.  
 17 MR. WILSON: Yeah. Here we are. Here's Sulphur  
 18 Springs.  
 19 THE WITNESS: Uh-huh.  
 20 MR. WILSON: And then as you come down into here,  
 21 there's the Sulphur Springs station (indicating).  
 22 THE WITNESS: Uh-huh.  
 23 MR. WILSON: Looks like a PS, point of switch.  
 24 THE WITNESS: Uh-huh.  
 25 MR. WILSON: Then it seems to me there's a siting

1 that runs adjacent to the main track down here (indicating).  
 2 THE WITNESS: Uh-huh. Uh-huh.  
 3 MR. WILSON: Down along through here (indicating)  
 4 to -- it looks like a point down here, although it's  
 5 difficult to see. But that would suggest two switches  
 6 connecting that site.  
 7 THE WITNESS: Yeah. There's one on each end.  
 8 MR. WILSON: One on each end.  
 9 THE WITNESS: Uh-huh.  
 10 MR. WILSON: These are valuation maps that were  
 11 attached to the deed from Conrail to Honey Creek Railroad.  
 12 MR. BROOKE: Okay.  
 13 MR. WILSON: Do you have copies of these?  
 14 MR. BROOKE: I've seen those.  
 15 MR. WILSON: Okay. I mean, this isn't something we  
 16 didn't give you, is it? I sent them all to --  
 17 MR. BROOKE: Kathleen.  
 18 MR. WILSON: No. I sent them all to Bill Smith  
 19 (sic). They came out of my Conrail records or the records  
 20 that I --  
 21 MR. BROOKE: Well, then I didn't --  
 22 MR. WILSON: But I sent them all to Bill. And Bill  
 23 should have forwarded them to you. I assume you received  
 24 them.  
 25 MR. BROOKE: I think we got ours from --

1 MR. WILSON: You may have gotten yours out of the  
 2 courthouse maybe.  
 3 MR. BROOKE: We got them from some other place  
 4 other than -- we didn't -- these records that you have right  
 5 here, Response for Request of Production of Documents, these  
 6 are the docu -- these are the records we got. That's all we  
 7 got.  
 8 MR. WILSON: Okay. Well, I can check with Bill and  
 9 make sure that these were passed on to you. But I assume  
 10 they were.  
 11 MR. BROOKE: Okay. All right. No, they weren't.  
 12 MR. WILSON: They weren't?  
 13 MR. BROOKE: They weren't.  
 14 MR. WILSON: Okay.  
 15 MR. BROOKE: I've seen that -- seen the deed  
 16 before.  
 17 MR. WILSON: Yeah.  
 18 MR. BROOKE: I don't know that I've seen those maps  
 19 that you just showed. I've seen the deed from Conrail.  
 20 MR. WILSON: They should have been attached to the  
 21 Conrail deed.  
 22 MR. BROOKE: Okay. I -- but we didn't get the deed  
 23 from Mr. Keaton.  
 24 MR. WILSON: Okay.  
 25 MR. BROOKE: We got it from a different source. I

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1 got it from the courthouse, I think. Or Kathleen got it in  
2 Washington, D.C. One of the two places; I don't know.  
3 MR. WILSON: Okay. They would -- I could -- well,  
4 we'll get that sorted out for you.  
5 MR. BROOKE: Okay. All right. Well --  
6 Q Okay. They were switches then for the double track, but they  
7 weren't switches to go anyplace else? There wasn't any other  
8 connection?  
9 A No. What that was -- if you'd like to know, I can tell you.  
10 Q Sure.  
11 A When we loaded trains at the elevator, we had to push them  
12 down there on the main track and -- or pull them down there  
13 on the main track. And then we had to get a -- run around  
14 those cars to push them down to -- to Norfolk Western because  
15 there was no place to get around down there. So you got  
16 fifty cars sitting down there and you can't get around them  
17 and your engine's stuck down there. So you can't do that.  
18 You got to push them in instead of pull them in.  
19 Q Okay.  
20 A So that's what that was all for.  
21 Q All right.  
22 A That's a passing -- a passing track, call it.  
23 Q Okay. A passing track.  
24 Let me ask a question here, and this is just for my  
25 own information. These pictures that I think are depicted in

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1 A Yes, sir.  
2 Q Okay. Do you know how INDOT found out that you were removing  
3 rail from the Honey Creek line and taking it to Rushville?  
4 A I don't know unless I told them. Somebody ought to know or  
5 have a note of it.  
6 Q Who actually did the work to remove the rails?  
7 A We did.  
8 Q "We" being who?  
9 A I had some of my employees.  
10 Q For Morristown Grain --  
11 A Uh-huh.  
12 Q -- or for Honey Creek Railroad --  
13 A Morristown.  
14 Q -- or the farm or which?  
15 A All of them.  
16 Q Okay.  
17 A It's hard to get those guys to stay in -- in there on a hot  
18 day pulling those rails.  
19 Q Well, I imagine. You've got to keep them busy too.  
20 A That's right.  
21 Q All right. So they would have been actually -- you wouldn't  
22 have hired a contractor to do that?  
23 A We did on some of it.  
24 Q Okay. Who did you hire? Do you remember?  
25 A Railworks.

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1 Exhibit 15. Okay?  
2 A Uh-huh.  
3 Q Now, you -- you don't recognize that. But if -- if the  
4 Highway Department, County Highway Department covered over  
5 those rails, the track wouldn't be usable, would it?  
6 A Yeah. You can chip it off and run right through there.  
7 Q Okay. But you'd have to physically go out and remove that  
8 before you could run the --  
9 A You just take one of those power cutoff saws and just run it  
10 right down in the asphalt on each side and take a pick-type  
11 pick and just pick that asphalt right off there --  
12 Q Okay. Well --  
13 A -- and go right through.  
14 Q What I'm saying though is you couldn't run the cars without  
15 having to do some -- some work on it to do that, right?  
16 A Oh, you'd have to do that. I mean, you'd derail if maybe you  
17 didn't. And it might cut right through it on a hot day. I  
18 don't know if a loaded car would.  
19 Q All right. But there would have to be at least -- you'd --  
20 you would be taking a gamble if you tried to run across it  
21 without doing some maintenance work to remove the asphalt  
22 around it -- around the rail, right?  
23 A That would not be a very wise decision to try to do that.  
24 Q Okay. So they'd be unusable until you picked away the  
25 asphalt.

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1 Q So do you know which part Railworks would have been hired to  
2 do?  
3 A Yeah. To pull -- to pull the spikes and pull the rail up and  
4 stack it.  
5 Q Okay. Which part? Did they do --  
6 A Oh, which part of the track?  
7 Q They do the -- the one at Norfolk Southern or they do the  
8 part that was --  
9 A Norfolk Southern.  
10 Q -- north of the elevator?  
11 A No. That's --  
12 Q They did the Norfolk Southern?  
13 A Yeah. Norfolk Southern. That was -- that two-mile job was a  
14 big job. We did that other little dinky job ourself.  
15 Q So the Norfolk Southern was a big job, that was the two-month  
16 job?  
17 A Yes. Two-mile job.  
18 Q Two-mile job. Okay. So Railworks would have done that. And  
19 where is Railworks located?  
20 A I think they're in Frankfort, Indiana. There's something  
21 about Railworks that I saw in one of those --  
22 MR. WILSON: Apparently have an office in  
23 Indianapolis.  
24 MR. BROOKE: Oh, Railworks Annex. That's the same  
25 place?

1 THE WITNESS: Yeah. Annex is the office. And I'm  
2 not sure that it's in existence. On Emory?  
3 MR. WILSON: No this is on North Turtle Creek or  
4 Turtle Creek North Drive.  
5 Q Okay. Do you remember what you paid Railworks to do that?  
6 A (The witness shakes head from side to side.)  
7 Q The answer's no, correct?  
8 A Correct.  
9 Q Okay.  
10 A Sorry about that.  
11 Q I just wanted to make sure.  
12 Okay. I think in one of these -- oh, here. The  
13 loan agreement with INDOT, Exhibit Number 4. This railroad  
14 was purchased out of -- Conrail was going to abandon this  
15 railroad and you purchased it to serve your grain terminal,  
16 right?  
17 A Yes.  
18 Q Okay. Had Conrail actually started the abandonment process?  
19 A No.  
20 Q Okay. They hadn't filed their paperwork or any of -- okay.  
21 A I don't think so.  
22 Q All right. Okay. Did Honey Creek have any regularly  
23 scheduled service there in Sulphur Springs? I mean, you told  
24 me you were hauling cars all time of the year because grain  
25 was coming in and that sort of thing. But was there any

1 regularly scheduled service?  
2 A You mean that cars that the trains run or --  
3 Q Right.  
4 A Well, no. It didn't -- it didn't quite work that way.  
5 Q Okay.  
6 A If we got fifty cars coming in, the grain company that we've  
7 sold it to that's sending the cars will tell us when they've  
8 been released and the destination, which may be in the  
9 southeast somewhere. And then of course now they -- they've  
10 got electronic ways of seeing where they're at on the track.  
11 But they would call and tell you what the time to arrive was,  
12 the grain company would. And then there was also a  
13 dispatcher that you'd call whenever they -- you know, watch  
14 for them on the receiving end of it.  
15 And then when they come, why, they just -- they can  
16 push them right in there, see.  
17 Q Okay.  
18 A And then --  
19 Q So they -- Norfolk Southern would push them right up to  
20 Sulphur Springs?  
21 A No. They push them right in the interchange there --  
22 Q Oh, okay. To the --  
23 A -- and we go down and get them.  
24 Q Okay.  
25 A That's our job --

1 Q All right.  
2 A -- you know, on our track. So that's what -- that's the way  
3 they do it.  
4 And then whenever we get them loaded, we call the  
5 -- the feed mill in the southeast that we've sold it to and  
6 tell them it's ready and then release it from -- from the  
7 railroad, have the railroad release it or we'd release it to  
8 the railroad. And then they come pick it up and take it on.  
9 Q Okay. You'd have -- you'd have to push the cars down to the  
10 interchange though, right?  
11 A Yes. That's correct.  
12 Q Okay. All right. So it just depended on when they release  
13 the cars and when you had the contracts for, you would have  
14 to fill them up and send them down to the interchange where  
15 Norfolk Southern would pick them up, right?  
16 A Right.  
17 Q Okay. Did you have so much time to fill them up?  
18 A Yes. Depends on whether it's leased cars or system cars.  
19 Leased cars you can take a little more time. You don't get  
20 into merge. But most of the time it's 24 hours.  
21 Q Okay.  
22 A So you've got to really work at it.  
23 Q Have to really work at it to fill them up or --  
24 A To get them in time -- to meet your time frame.  
25 Q Okay. I know with shipping containers you have to merge

1 after 24 hours. So same with the railcars?  
2 A Yeah.  
3 Q You'd have to fill up the whole fifty car --  
4 A Yes.  
5 Q -- train in 24 hours and --  
6 A Yes. Get it down there to the interchange.  
7 Q Okay. Okay.  
8 (Thereupon, after an off-the-record discussion,  
9 the following proceedings were had:)  
10 Q Did -- when you purchased the track from Conrail, did they  
11 classify the rail as to what kind of rail it was?  
12 A I don't think so. I don't remember it if they did.  
13 Q Okay.  
14 A I mean, we pretty much knew what it was.  
15 Q Okay. What did you know it was?  
16 A It was a mix between 130-pound rail and 100-pound rail.  
17 Q Okay. Where would -- was there specific places where you  
18 knew the 130-pound rail was and the hundred-pound rail was?  
19 A Yes.  
20 Q Where was the 130-pound rail?  
21 A It was the two mile that we took up coming off the  
22 interchange.  
23 Q Okay. Then the rest of it would have been the hundred-pound  
24 rail?  
25 A Yes.

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1 Q Okay.

2 A Outside of the switches and they were 140s.

3 Q Okay. How -- how big is a switch? I mean, how big -- how

4 big is a switch?

5 A In what respect?

6 Q Well, I mean how long is it?

7 A Oh, gee.

8 Q Is it a rail section?

9 A Yes.

10 Q 30, 40 feet long? Or is it shorter or is it --

11 A No. You have to -- you have to use -- you come in off the

12 rail. And you have to -- you can't bend real quick, you

13 know. So it comes in off of there. And then it -- then you

14 go into the -- the -- the switch itself.

15 That's probably -- oh, shoot, set of ties for a

16 switch is -- I forget how many pieces there is. It'd

17 probable be about 100 -- somewhere from 75 to 100 foot

18 long. Then you come back out the other way.

19 Q Okay. So all that would have been 140-pound track?

20 A It was, yeah.

21 Q Okay.

22 MR. BROOKE: Those are all the questions I have.

23 MR. WILSON: Good.

24 CROSS-EXAMINATION,

25 QUESTIONS BY RICHARD R. WILSON:

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1 put them on our side. And they brought cranes in there and

2 picked them off. And we took the cars back down for them.

3 Q Okay. But at that -- but during the time in which you

4 operated the line from about 1993 through, well, when the --

5 when you had the big collapse in '99, did you have any other

6 shippers or any other companies come to you and ask for rail

7 service?

8 A We didn't have any shippers. But, oh, in the last --

9 Q I'm talking strictly about the Sulphur Springs one.

10 A Yeah. You mean anybody wanted to --

11 Q Did you have anybody approach you and say, Can you provide me

12 with rail service?

13 A Yes, we did have, about a month or two ago. Guy called me up

14 and wanted to know about whether or not we could provide

15 service back to the -- to the NS. And they were interested

16 in building an ethanol plant up by Sulphur Springs. And they

17 called me twice and --

18 Q So -- so there are -- so within just the last couple of

19 months, in other words, you've had an inquiry about

20 reactivating the line, the Sulphur Springs line?

21 A Yes. Yeah. They had a meeting there at Sulphur Springs, at

22 the Town meeting about it. I didn't go to it or anything.

23 But I know they guy told me that they talked to them about

24 it.

25 Q Okay.

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1 Q Bill, you indicated in the course of your direct examination

2 that there were no other stations other than the Sulphur

3 Springs station where your Morristown Grain plant was

4 located. Did you ever handle any other shipments on the

5 Sulphur Springs line besides the cars that were, you know,

6 loaded at your plant up there on Sulphur Springs?

7 A We had on one occasion to -- to bring in some flat cars with

8 electric -- it was generators for a peaking station that was

9 being built at Cadiz. And we brought those in so they could

10 unload them in Sulphur Springs. And I think it was Cadiz,

11 where the peaking station is.

12 Q A peaking station?

13 A Yes.

14 Q What's that?

15 A That's -- what it is is for when the voltage peaks --

16 Q Oh, okay.

17 A -- it kicks in some jet engine.

18 Q Uh-huh.

19 A There's also a big gas main that runs through -- by Sulphur

20 Springs. So they hook those jet engines to that gas main so

21 they always have energy.

22 Q So it's a p-e-a-k-i-n-g, peaking station?

23 A Yes.

24 Q Okay.

25 A So we -- we put those on our -- brought them up the line and

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1 A Be a big shot in the arm for Sulphur Springs.

2 Q Would they be looking at acquiring your property up there?

3 A Yeah. That's kind of what they indicated.

4 Q Okay. Let's see. When did your lawsuit regarding the

5 damages to the Sulphur Springs plant finally conclude; do you

6 recall?

7 A Late -- let's see. Late or -- let me think. I'm saying late

8 July or August of '06.

9 Q July or August of '06.

10 A Just this past summer.

11 Q Okay. And what was the nature of that dispute, that

12 lawsuit? What were your claims against -- I assume you made

13 claims against the insurance company?

14 A Yes. Business interruption. There was a dispute over that.

15 Dispute over the value of the grain handling equipment and

16 the bins. They said the bins was older and they was

17 depreciated out to little or nothing, and they didn't want to

18 pay what the market was on those. And they -- also I put in

19 all new 10,000-an-hour capacity -- 10,000-bushel-an-hour

20 capacity conveyers from Riley Equipment out of Vincennes.

21 They was state-of-the-art drag flight conveyers. And

22 operation. Rewired the facility, put fans on the bins.

23 Q I take it they didn't want to pay you for all of that.

24 A Right.

25 Q Okay. Let me check. See -- oh, there's been quite a bit of

1 testimony here this morning about you removing the two-mile  
2 section of track from the connection with NS up towards  
3 Sulphur Springs. While you removed the rail, did you tear up  
4 any portion of the right of way?  
5 A No.  
6 Q Take ballast off the right of way?  
7 A No.  
8 Q And you wasn't -- and you -- you -- did you give permission  
9 to the county people to pave over the crossings?  
10 A No.  
11 Q And you did exceed or let INDOT take the rail out of the one  
12 crossing up at Sulphur Springs?  
13 A Yes, I did.  
14 Q Okay, fine.  
15 MR. WILSON: I have no other questions.  
16 REDIRECT EXAMINATION,  
17 QUESTIONS BY JOHN H. BROOKE:  
18 Q When were these items for the peaking station -- when was  
19 that -- when did that happen?  
20 A It was -- it would have been prior to the -- to '99. So it  
21 must have been somewhere in about '95 or '96, I'm gonna'  
22 estimate. Of course they would know -- they would know at  
23 the electric company. Do you know where Cadiz is?  
24 Q Uh-huh. I do.  
25 A Do you know what they have there?

1 Q Yes, I do?  
2 A Okay. Whenever they put that in, that's whenever they did  
3 it.  
4 Q Okay. Okay. Now this inquiry about the ethanol plant, have  
5 you heard that they're going to move the ethanol plant over  
6 to Mount Summit?  
7 A No.  
8 Q Okay. You haven't been contacted since then, have you?  
9 A No.  
10 Q Okay. And who was it that contacted you?  
11 A Tim Chapman.  
12 Q And who's Tim Chapman?  
13 A He's a farmer out there by Sulphur Springs. He had the  
14 property that the ethanol plant was actually wanting to build  
15 on.  
16 Q Okay.  
17 A And they were interested in the railroad and for the right of  
18 way and the track that was already there.  
19 Q Okay.  
20 A Takes a lot of track for an ethanol plant, and that's a very  
21 little bit to be put back in.  
22 Q But you don't know that they've -- they've had discussions  
23 about rerouting that or moving that ethanol plant over closer  
24 to State Road 37?  
25 A No.

1 Q Okay.  
2 A What railroad would they be on then?  
3 Q Well, there's the Norfolk Southern.  
4 A Yes. I didn't know that. I mean, I didn't know they was  
5 gonna' move it over by Mount Summit.  
6 Q Okay. So you -- when was the last time you talked to  
7 Mr. Chapman?  
8 A About a month ago.  
9 Q This lawsuit on the collapse of the elevator, how did -- was  
10 it concluded? Did you reach a settlement?  
11 A Yes.  
12 Q How much did they pay you?  
13 MR. WILSON: That may be confidential, by the way.  
14 I don't know what the terms of your settlement agreement are.  
15 THE WITNESS: I have to check on that.  
16 MR. WILSON: Let's get back to you on that. If you  
17 need that information, we probably could provide it under --  
18 well, I don't know. Depends on what the settlement agreement  
19 is. If we're able to do it, we'd probably provide it to you  
20 under Protective Order or some kind of a confidentiality  
21 arrangement.  
22 MR. BROOKE: Okay. Well, we'll leave that question  
23 open then.  
24 Q So between 1993 and 1999, when you -- you stopped operations  
25 on this -- this line, you only had one other customer

1 basically?  
2 A Well, we just -- we just took those -- pulled those flat cars  
3 up there for kind of a special exception. I mean, there  
4 wasn't a customer in such as they was on the line, settled on  
5 the line or --  
6 Q Right.  
7 A It was just an unload, off-loading --  
8 Q Okay.  
9 A -- operation, is what it amounted to.  
10 Q Did you charge them for that?  
11 A I don't -- I think they -- I don't know if they paid us  
12 anything for it or not. Surely they did. But -- I'm sure  
13 they did. But I don't know how much or what --  
14 Q Okay.  
15 MR. BROOKE: Okay. No further questions then. But  
16 that one open, I guess.  
17 MR. WILSON: Yeah. Free to go, Bill.  
18 THE COURT REPORTER: Do you want him to read?  
19 MR. WILSON: Pardon?  
20 THE COURT REPORTER: Do you want him to read?  
21 MR. WILSON: Yeah. I think we just make sure that  
22 we've got it all.  
23 MR. BROOKE: Read and sign, yes, please. I would  
24 request that.  
25

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(1:10 p.m.)

WILLIAM E. SMITH

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IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed my notarial seal this \_\_\_\_\_ of \_\_\_\_\_, 2007

**N O T A R Y   P U B L I C**

County of Residence  
Hamilton

1 SS

COUNTY OF HAMILTON 1

I do further certify that I am a disinterested person in this cause of action; that I am not a relative or attorney

<p><b>\$</b></p> <p>\$200,000 (1) 30:22</p> <p>\$35 (1) 21:20,25 89:5,15,23 60:6</p> <p>62:12,18,23</p> <p>\$84,000 (1) 60:18</p> <hr/> <p><b>0</b></p> <p>02 (1) 45:13</p> <p>06 (1) 104:8,9</p> <hr/> <p><b>1</b></p> <p>1 (1) 24:1,5,24 35:20 56:23</p> <p>1,880 (1) 57:11</p> <p>1:10 (1) 109:2</p> <p>10 (1) 65:18,22,25</p> <p>10,000-an-hour (1) 104:19</p> <p>10,000-bushel-an-hour (1) 104:19</p> <p>100 (1) 101:17,17</p> <p>100-pound (1) 57:13,14 100:16</p> <p>11 (1) 66:7 67:20</p> <p>11:28 (1) 52:25</p> <p>11:45 (1) 65:20</p> <p>12 (1) 4:2 69:22,25 70:19,22</p> <p>125 (1) 73:5,10,13</p> <p>13 (1) 70:16 84:18</p> <p>130-pound (1) 39:11,12,23 44:13 100:16,18,20</p> <p>14 (1) 3:2 26:11 71:2,5</p> <p>140-pound (1) 88:23 101:19</p> <p>140s (1) 101:2</p> <p>16 (1) 37:8 72:7 94:1</p> <p>16 (1) 72:22</p> <p>17 (1) 73:4</p> <p>175-pound (1) 38:22</p> <p>18 (1) 73:12</p> <p>19 (1) 73:24 74:5</p> <p>1900s (1) 39:9</p> <p>1984 (1) 3:1</p> <p>1993 (1) 8:17 103:4 107:24</p> <p>1994 (1) 33:21</p> <p>1996 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**WILLIAM E. SMITH (02/12/07) HONEY CREEK RAILROAD, INC. PETITION FOR DECLATORY JUDGMENT**

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# EXHIBIT I

**ENTERED**  
**Office of Proceedings**

**JUN 18 2007**

**Part of**  
**Public Record**

# EXHIBIT I-1



# INDIANA DEPARTMENT OF TRANSPORTATION

## Multimodal Division

100 North Senate Avenue, Room N901

Indianapolis, Indiana 46204

Fax: (317) 232-1499

**FRANK O'BANNON**, Governor  
**J. Bryan Nicol**, Commissioner

Writer's Direct Line (317) 232-1491

February 19, 2002

Mr. William Smith  
 Honey Creek Railroad  
 P.O. Box 646  
 Morristown, IN 46161

Dear Mr. Smith:

As we discussed earlier this afternoon during our phone conversation, INDOT's Greenfield District reports that the Honey Creek Railroad has severed its Sulfur Springs Line and begun to salvage the track materials. This is of great concern to INDOT for two reasons:

1. To the best of our knowledge, HCRR has not requested nor obtained an abandonment certificate from the Surface Transportation Board allowing for the abandonment of this line segment.
2. Taking up the rail and discontinuing service on the line is a direct violation of Sections 10 and 14(d) of HCRR's loan agreement with INDOT dated September 3, 1993 which requires the railroad to be maintained and operated for the term of the loan (through 2013).

I must request that HCRR immediately cease all salvage activities and ensure that none of the track structure materials are sold to any third party. As you are now aware, prior to removing rail and discontinuing service, railroads must receive authority to do so from the STB. HCRR should apply for an abandonment exemption with the STB as soon as possible and may wish to contact an attorney familiar with STB procedures to assist with the required filings.

In addition to obtaining proper abandonment authority, HCRR will need to address its outstanding loan with INDOT. Our records indicate HCRR still owes \$124,450 in principle on its loan. HCRR's actions clearly violate the loan agreement with INDOT allowing INDOT, at its discretion, to call for the immediate payment of all outstanding balances. You have advised that it was HCRR's intent to reuse the materials salvaged from its inactive Sulfur Springs Line to improve conditions on its Rush County Line. Since this activity would be consistent with the public policy goals of the Industrial Rail Service Fund, I believe it may be possible to work out an arrangement to allow this transfer of assets between line segments. For this to happen, the following must occur:

EXHIBIT	7
WITNESS	SMITH
DATE	2/12/02
LISA C. PIERCE	

Mr. William Smith

February 19, 2002

Page 2

1. HCRR must consent to amend its loan agreement with INDOT allowing for materials purchased with loan funds to be transferred from the inactive HCRR line segment to the active HCRR line segment.
2. In exchange for INDOT giving up its security interest in the Sulfur Springs Line, HCRR must agree to give INDOT an equal and primary security interest in the Rush County Line
3. New agreements covering the above points must be signed by both parties and recorded in the appropriate county offices.

I appreciate your willingness to meet with Venetta Holifield and me on March 7<sup>th</sup> to discuss the details of this issue and tour the Rush County Line. It will help us both to see the property and to get a feel of HCRR's rehabilitation needs. In the meantime, please begin to draw up a scope of work (including material quantities and dollar values) which shows the materials you plan to move between line segments and how they will be utilized on the Rush County Line. I would also appreciate being apprised of any progress you make on the STB filings (please note that HCRR must serve INDOT with copies of any filings) and again offer any assistance that I can provide to help resolve the issues raised in this letter.

Sincerely,



Michael Scime  
Rail Section Manager

# EXHIBIT I-2







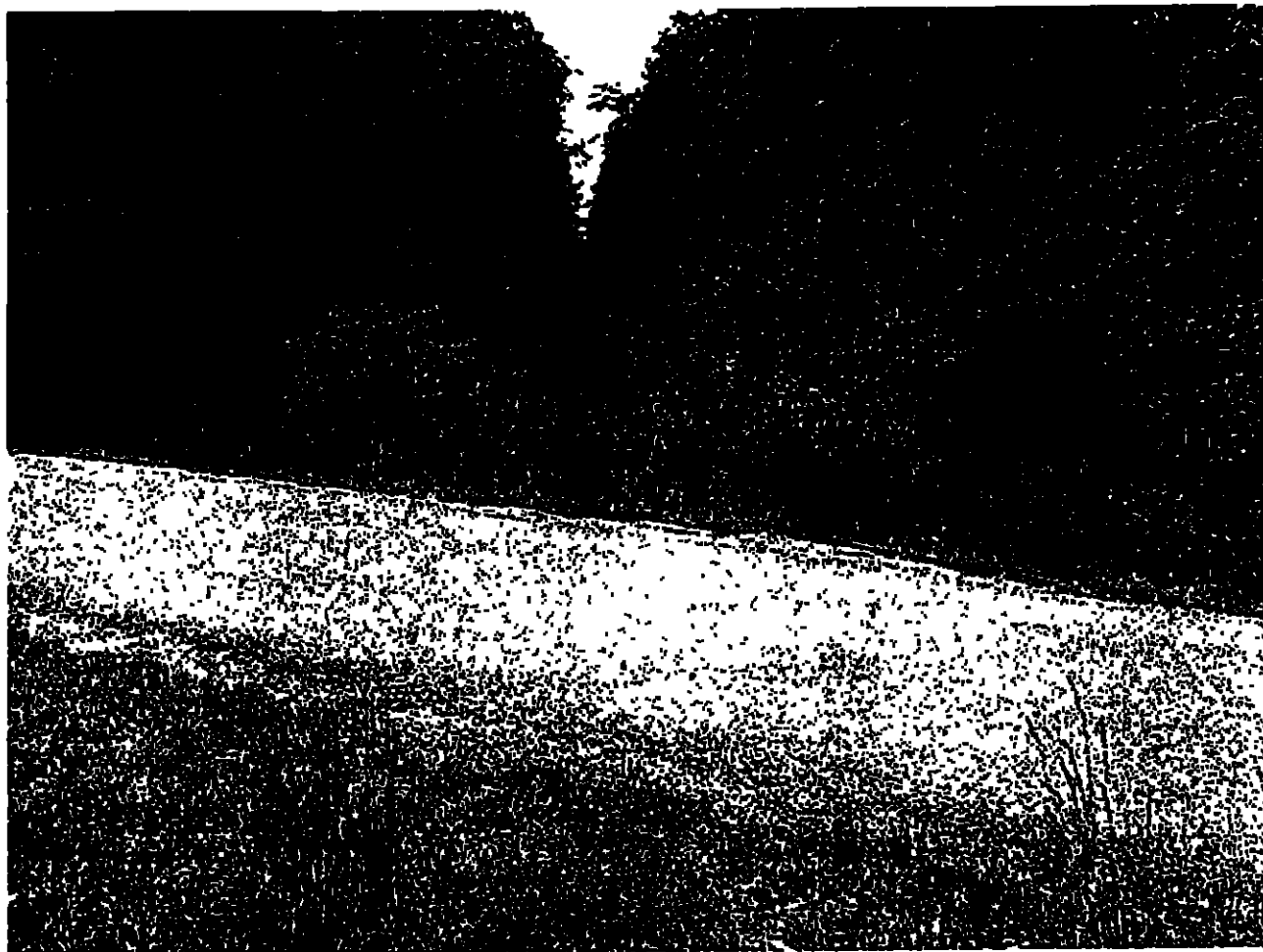
This section Runs Along Co Rd <sup>300</sup>~~200~~ N.



Co Rd 125w



Looking North Co Rd 125 W. County Hwy paved over  
ROW.



Looking North  
Co Rd 400N



Looking South From CO Rd 200W



Looking <sup>North</sup>~~South~~ From CO. Rd 200W

D. H. F.



Looking South from 36

Pic 4



Looking South from 36

P. 13



Rail & Spikes piled By The mill  
most likely removed From Road and front of m. 11


Pic  
1



# EXHIBIT I-3

5. HCR objects to this request for the reason it requests documents which, if they exist, are protected by the attorney-client privilege.
6. None other than those produced by the Indiana Department of Transportation.
7. Copies have not been retained by HCR.
8. Copies have not been retained by HCR.
9. The only shipper is Morristown Grain Company, Incorporated, and William E. Smith is the sole shareholder.
10. None.
11. See all STB decisions in Abandonment Docket # AB 865-0.
12. None.
13. None.
14. HCR objects to this request for the reasons that it is overly broad, and it seeks documents which are totally irrelevant to the issues of abandonment. Without waiving said objection, see the attached tax documents.

KEATON AND KEATON, P.C.

By   
William B. Keaton, #5102-70  
Attorney for Honey Creek Railroad, Inc.

KEATON AND KEATON, P.C.  
126 West Second Street  
Rushville, Indiana 46173  
Telephone: (765)932-3947  
Fax: (765)938-2803

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing pleading was personally served upon the person or persons listed below or was served by facsimile transmission and/or by United States Mail, postage prepaid and addressed to the person or persons listed below:

John H. Brooke, Esq.  
Brooke & Mawhorr, P.C.  
P. O. Box 1071  
Muncie, Indiana 47308-1071

Kathleen C. Kauffman  
Ackerson, Kauffman, Fex, PC  
1250 H. Street, NW, Suite 850  
Washington, DC 20005

Richard R. Wilson, Esq.  
127 Lexington Avenue, Suite 100  
Altoona, PA 16601

Dated: Sept. 13, 2006

By William B. Keaton  
William B. Keaton

S:\Shared Data\WordPerfect\Folders\work\HoneyCreekRespProd.sep.wpd

Dear Taxpayers:

Enclosed is your spring tax statement to be used for payment due Friday, June 30, 2006. A copy of the original statement will be mailed at a later date. This will include your fall tax amount which will be due Friday, November 10, 2006. For your convenience, you may pay at the following banks with the statement that is enclosed. Ameriana Savings Bank, Citizens State Bank, Star Financial Bank, and First Merchants Bank. Payments may also be made at the Treasurer's office. Make your check or money order payable to "Henry County Treasurer".

Payment made by mail must be correctly addressed, have the correct postage and a Postal Service postmark on or before the due date that is printed on the statement. Postmark does not mean the date printed by a postage meter. When mailing tax statement, please include a self addressed, stamped envelope, so we can return your stamped paid receipt.

Checks must clear or the tax payment is void. A \$20 NSF check fee will be added to the amount due for each NSF check received.

Credit card payments may be made only at <http://www.henryco.net> or by calling 1-866-480-8568. There is a fee for using this service. Credit card checks will not be accepted in the Treasurer's office.

If your mortgage company is responsible for the payment of your taxes, please forward this statement intact, to them immediately.

We apologize for the delay.  
Henry County Treasurer's Office

Inv. of pmt 765-529-4404

101 S. Main St.

Newville 47362

Paid \$ 1714.54  
6-14-06  
Chk # 60957

Dear Taxpayers:

Enclosed is your spring tax statement to be used for payment due Friday, June 30, 2006. A copy of the original statement will be mailed at a later date. This will include your fall tax amount which will be due Friday, November 10, 2006. For your convenience, you may pay at the following banks with the statement that is enclosed. Ameriana Savings Bank, Citizens State Bank, Star Financial Bank, and First Merchants Bank. Payments may also be made at the Treasurer's office. Make your check or money order payable to "Henry County Treasurer".

Payment made by mail must be correctly addressed, have the correct postage and a Postal Service postmark on or before the due date that is printed on the statement. Postmark does not mean the date printed by a postage meter. When mailing tax statement, please include a self addressed, stamped envelope, so we can return your stamped paid receipt.

Checks must clear or the tax payment is void. A \$20 NSF check fee will be added to the amount due for each NSF check received.

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If your mortgage company is responsible for the payment of your taxes, please forward this statement intact, to them immediately.

We apologize for the delay.  
Henry County Treasurer's Office

Caust House  
1015 Main

47362

765-529-4404

Paid  
\$246.50  
CASH  
6-26-06

# Henry County, Indiana

Approved by State Board of Accounts for Henry County 2003

REAL PROPERTY

1st HALF 2005

06/30/2006

**PARCEL LOCATION:**

MORRISTOWN GRAIN CO  
PO BOX 646  
MORRISTOWN IN 46161

PARCEL ID: 029-01617-00

TAX DISTRICT: SULPHUR SPRINGS TOWN

OWNER NAME: MORRISTOWN GRAIN CO

CHECK # 180

LEGAL INFORMATION:  
S.W.S.W. 16-16-10 1.055 A. / (D-646-01617-00)

Gross Tax Rate	2.3917	Acres	1.055
Replacement Credit	0	Class	1
Effective Tax Rate	2.3917	Land Use Code	300
TAX VALUES		EXEMPTIONS	
Gross Taxes	287.02	Mortgage	0
Replacement Credit	-72.04	Standard	0
Subtotal	214.98	Age	0
		Other	0
Homestead Reduction	0.00	TOTAL	0
Current Net Taxes	214.98		
Special Assessments	5.00		
Special Assessment Adj.	0.00		
Current Net Taxes & Assmts(YEAR)	219.98		
Current Net Taxes & Assmts(HALF)	112.49		
CURRENT TAX DISTRIBUTION			
Penalties	0.00	State	0.22
Interest	0.00	Henry County	59.41
Adjustments	0.00	Sulphur Springs Township F	2.17
Delinquent General Taxes	0.00	Shenandoah Schools	120.62
Delinquent Assessments	0.00	County Library	13.82
		Sulphur Springs Corp	18.71
		Tax Increment Credit Fund	0.23
		Special Assessment	5.00
<b>FULL YEAR TOTAL</b>	<b>219.98</b>	<b>Total</b>	<b>219.98</b>
<b>PAYMENTS</b>			
<b>OTHER CREDITS</b>			
<b>HALF YEAR DUE</b>	<b>112.49</b>		
Tax Bill prepared on	06/06/06		

APPRaised VALUE			
Land	Improvement	Total	
12,000	0	12,000	

SPECIAL ASSESSMENT		
Property and Description	Delinquent	Current
54600 J H THOMPSON	0.00	6.00
<b>PAID</b>		
<i>Line</i>		
<b>MAY 16 2006</b>		
<b>Total</b>	<b>0.00</b>	<b>6.00</b>

Debra G. Wooken  
HENRY COUNTY TREASURER

# Henry County, Indiana

Approved by State Board of Accounts for Henry County 2003

REAL PROPERTY

1st HALF 2005

06/30/2006

PARCEL LOCATION: 302 E MAIN ST

PARCEL ID: 029-01819-00

TAX DISTRICT: SULPHUR SPRINGS TOWN

OWNER NAME: MORRISTOWN GRAIN CO

CHECK # 182

LEGAL INFORMATION:  
W.S.W. 18-18-10 .356 A. / (D-648-01819-00)

MORRISTOWN GRAIN CO  
PO BOX 648  
MORRISTOWN IN 46161

Gross Tax Rate	2.3917	Acres	.356
Replacement Credit	0	Class	1
Effective Tax Rate	2.3917	Land Use Code	300
TAX VALUES		EXEMPTIONS	
Gross Taxes	3,995.84	Mortgage	0
Replacement Credit	-1,003.68	Standard	0
Subtotal	2,995.26	Age	0
		Other	0
Homesite Reduction	0.00	TOTAL	0
Current Net Taxes	2,995.26		
Special Assessments	5.00		
Special Assessment Adj.	0.00		
Current Net Taxes & Assmt (YEAR)	3,000.26		
Current Net Taxes & Assmt (HALF)	1,502.63	CURRENT TAX DISTRIBUTION	
Penalties	0.00	State	3.01
Interest	0.00	Henry County	827.81
Adjustments	0.00	Sulphur Springs Township F	30.18
Delinquent General Taxes	0.00	Shenandoah Schools	1,680.54
Delinquent Assessments	0.00	County Library	189.73
		Sulphur Springs Corp	280.74
		Tax Increment Credit Fund	3.26
		Special Assessment	5.00
FULL YEAR TOTAL	3,000.26	Total	2,995.26
PAYMENTS			
OTHER CREDITS			
HALF YEAR DUE	1,502.63		
Tax Bill prepared on	06/06/06		

APPRAISED VALUE		
Land	Improvement	Total
7,100	180,100	187,200

SPECIAL ASSESSMENT		
Proj# and Description	Delinquent	Current
84800-J H THOMPSON	0.00	5.00
Total	0.00	5.00

**PAID**

JUNE 16 2006

Debra G. Wacker  
HENRY COUNTY TREASURER



# Henry County, Indiana

Approved by State Board of Accounts for Henry County 2003

REAL PROPERTY

1st HALF 2005

06/30/2006

**PARCEL LOCATION:**

HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH  
649 W FORSTER HEIGHTS RD  
RUSHVILLE IN 46173

PARCEL ID: 029-01838-00

TAX DISTRICT: SULPHUR SPRINGS TOWN

OWNER NAME: HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH

CHECK # 129

LEGAL INFORMATION:  
S W 18-18-10 1 17 AC

Gross Tax Rate	2.3917	Acres	1.17
Replacement Credit	0	Class	U
Effective Tax Rate	2.3917	Land Use Code	800

TAX VALUES		EXEMPTIONS		APPRAISED VALUE		
				Land	Improvement	Total
Gross Taxes	33.90	Mortgage	0			
Replacement Credit	-8.42	Standard	0	1,400	0	1,400
Subtotal	25.08	Age	0			
		Other	0			
Homestead Reduction	0.00	TOTAL	0			
Current Net Taxes	25.08					
Special Assessments	0.00					
Special Assessment Adj.	0.00					
Current Net Taxes & Assmts (YEAR)	25.08					
Current Net Taxes & Assmts (HALF)	12.54					
Penalties	0.00	CURRENT TAX DISTRIBUTION				
Interest	0.00	State	0.03			
Adjustments	0.00	Henry County	6.93			
Delinquent General Taxes	0.00	Sulphur Springs Township F.	0.25			
Delinquent Assessments	0.00	Shenandoah Schools	14.07			
		County Library	1.69			
		Sulphur Springs Corp	2.18			
		Tax Increment Credit Fund	0.03			
		Special Assessment	0.00			
FULL YEAR TOTAL	25.08	Total	25.08			
PAYMENTS						
OTHER CREDITS						
HALF YEAR DUE	12.54					
Tax Bill prepared on	06/06/06					

SPECIAL ASSESSMENT		
Project and Description	Delinquent	Current
PAID		
Total	0.00	0.00

JUN 27 2006

Debra G. Woake  
HENRY COUNTY TREASURER

# Henry County, Indiana

Approved by State Board of Accounts for Henry County 2003

REAL PROPERTY

1st HALF 2005

06/30/2006

## PARCEL LOCATION:

HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH  
640 W FOSTER HEIGHTS RD  
RUSHVILLE IN 46173

PARCEL ID: 020-00657-00

TAX DISTRICT: SULPHUR SPRINGS TOWN

OWNER NAME: HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH

CHECK # 119

LEGAL INFORMATION:  
SW 13-18-9 .023 AC

Gross Tax Rate	2.3917	Acres	.023
Replacement Credit	0	Class	U
Effective Tax Rate	2.3917	Land Use Code	600

TAX VALUES		EXEMPTIONS		APPRAISED VALUE		
				Land	Improvement	Total
Gross Taxes	5.60	Mortgage	0			
Replacement Credit	-0.69	Standard	0	100	0	100
Subtotal	5.00	Age	0			
Homestead Reduction	0.00	Other	0			
		TOTAL	0			
Current Net Taxes	5.00					
Special Assessments	0.00					
Special Assessment Adj.	0.00					
Current Net Taxes & Assmts (YEAR)	5.00					
Current Net Taxes & Assmts (HALF)	5.00	CURRENT TAX DISTRIBUTION				
Penalties	0.00	State	0.01			
Interest	0.00	Henry County	1.38			
Adjustments	0.00	Sulphur Springs Township F	0.05			
Delinquent General Taxes	0.00	Shenandoah Schools	2.81			
Delinquent Assessments	0.00	County Library	0.32			
		Sulphur Springs Corp	0.44			
		Tax Incremental Credit Fund	-0.01			
		Special Assessment	0.00			
FULL YEAR TOTAL	5.00	Total	10.00			
PAYMENTS						
OTHER CREDITS						
HALF YEAR DUE	5.00					
Tax Bill prepared on	06/06/06					

SPECIAL ASSESSMENT		
Project and Description	Delinquent	Current
Total	0.00	0.00

**PAID**

**JUN 27 2006**

*Debra G. Woelker*  
HENRY COUNTY TREASURER





# Henry County, Indiana

Approved by State Board of Accounts for Henry County 2003

REAL PROPERTY

1st HALF 2005

08/30/2005

PARCEL LOCATION:

MORRISTOWN GRAIN CO  
PO BOX 648  
MORRISTOWN IN 48181

PARCEL ID: 029-01818-00

TAX DISTRICT: SULPHUR SPRINGS TOWN

OWNER NAME: MORRISTOWN GRAIN CO

CHECK # 191

LEGAL INFORMATION:  
IN W.S.W. 18-18-10 .98 A / (D)

Gross Tax Rate	2.3917	Acres	.98
Replacement Credit		Class	5
Effective Tax Rate	2.3917	Land Use Code	300

TAX VALUES		EXEMPTIONS		APPRAISED VALUE		
				Land	Improvement	Total
Gross Taxes	285.48	Mortgage	0			
Replacement Credit	-86.84	Standard	0	11,100	0	11,100
Subtotal	198.64	Age	0			
		Other	0			
Homestead Reduction	0.00	TOTAL	0			
Current Net Taxes	198.64					
Special Assessments	0.00					
Special Assessment Adj.	0.00					
Current Net Taxes & Assmts (YEAR)	198.64					
Current Net Taxes & Assmts (HALF)	99.42					
Penalties	0.00	CURRENT TAX DISTRIBUTION				
Interest	0.00	State	0.20			
Adjustments	0.00	Henry County	54.95			
Delinquent General Taxes	0.00	Sulphur Springs Township F	2.00			
Delinquent Assessments	0.00	Shenandoah Schools	111.58			
		County Library	12.00			
		Sulphur Springs Corp	17.31			
		Tax Increment Credit Fund	0.22			
		Special Assessment	0.00			
<b>FULL YEAR TOTAL</b>	<b>198.64</b>	<b>Total</b>	<b>203.64</b>			
<b>PAYMENTS</b>						
<b>OTHER CREDITS</b>						
<b>HALF YEAR DUE</b>	<b>99.42</b>					

SPECIAL ASSESSMENT	
Profit and Description	Delinquent Current
<b>PAID</b>	
June 16 2005	
Total	0.00 0.00

Debra G. Walker  
HENRY COUNTY TREASURER

Tax Bill prepared on 08/08/05

# Henry County, Indiana

Approved by State Board of Accounts for Henry County 2003

REAL PROPERTY

1st HALF 2006

06/30/2006

**PARCEL LOCATION:**

HOWEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH  
649 W FOSTER HEIGHTS RD  
RUSHVILLE IN 46173

PARCEL ID: 008-01945-00

TAX DISTRICT: JEFFERSON TOWNSHIP

OWNER NAME: HOWEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH

CHECK # 343

LEGAL INFORMATION:  
NW 19-18-10 1.28 AC

Gross Tax Rate	2.2266	Acres	1.28
Replacement Credit	0	Class	U
Effective Tax Rate	2.2266	Land Use Code	800

TAX VALUES		EXEMPTIONS		APPRaised VALUE		
Gross Taxes	35.68	Mortgage	0	Land	Improvement	Total
Replacement Credit	-8.08	Standard	0	1.800	0	1.800
Subtotal	28.58	Age	0			
Homestead Reduction	0.00	Other	0			
		TOTAL	0			
Current Net Taxes	28.58					
Special Assessments	0.00					
Special Assessment Adj.	0.00					
Current Net Taxes & Assmts (YEAR)	28.58					
Current Net Taxes & Assmts (HALF)	13.29					
Penalties	0.00					
Interest	0.00					
Adjustments	0.00					
Delinquent General Taxes	0.00					
Delinquent Assessments	0.00					
		CURRENT TAX DISTRIBUTION				
		State	0.03			
		Henry County	7.88			
		Jefferson Township	0.83			
		Shenandoah Schools	18.00			
		County Library	1.81			
		Tax Increment Credit Fund	0.03			
		Special Assessment	0.00			
		Total	31.58			
FULL YEAR TOTAL		28.58				
PAYMENTS						
OTHER CREDITS						
HALF YEAR DUE		13.29				
Tax Bill prepared on 06/08/06						

SPECIAL ASSESSMENT		
Proj# and Description	Delinquent	Current
Total	0.00	0.00

**PAID**

**JUN 27 2006**

*Debra G. Woakey*  
HENRY COUNTY TREASURER

Return this notice with payment

# Henry County, Indiana

Approved by State Board of Accounts for Henry County 2003

REAL PROPERTY

1st HALF 2005

06/30/2006

**PARCEL LOCATION:**

HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH  
649 W FOSTER HEIGHTS RD  
RUSHVILLE IN 46173

PARCEL ID: 006-00643-00

TAX DISTRICT: JEFFERSON TOWNSHIP

OWNER NAME: HONEY CREEK RAILROAD INC  
C/O WILLIAM E SMITH

CHECK # 342

LEGAL INFORMATION:  
NE 14-18-9 1.47 AC

Gross Tax Rate	2.2288	Acres	1.47
Replacement Credit	0	Class	U
Effective Tax Rate	2.2288	Land Use Code	800
<b>TAX VALUES</b>		<b>EXEMPTIONS</b>	
Gross Taxes	42.38	Mortgage	0
Replacement Credit	-10.78	Standard	0
Subtotal	31.60	Age	0
		Other	0
Homestead Reduction	0.00	TOTAL	0
Current Net Taxes	31.60		
Special Assessments	0.00		
Special Assessment Adj.	0.00		
Current Net Taxes & Assmts (YEAR)	31.60		
Current Net Taxes & Assmts (HALF)	15.80	<b>CURRENT TAX DISTRIBUTION</b>	
Penalties	0.00	State	0.03
Interest	0.00	Henry County	9.37
Adjustments	0.00	Jefferson Township	0.98
Delinquent General Taxes	0.00	Sherandooh Schools	18.03
Delinquent Assessments	0.00	County Library	2.15
		Tax Increment Credit Fund	0.04
		Special Assessment	0.00
<b>FULL YEAR TOTAL</b>	<b>31.60</b>	<b>Total</b>	<b>31.60</b>
<b>PAYMENTS</b>			
<b>OTHER CREDITS</b>			
<b>HALF YEAR DUE</b>	<b>15.80</b>		
Tax Bill prepared on 06/06/06			

APPRAISED VALUE			
Land	Improvement	Total	
1,900	0	1,900	

SPECIAL ASSESSMENT		
Item and Description	Delinquent	Current
<b>Total</b>	<b>0.00</b>	<b>0.00</b>

**PAID**

JUN 27 2006

Debra G. Wacker  
HENRY COUNTY TREASURER

Return this portion with payment

# EXHIBIT J

Before the  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 34869

HONEY CREEK RAILROAD INC  
PETITION FOR DECLARATORY ORDER

COPY

The deposition upon oral examination of MICHAEL MCGATHEY, a witness produced and sworn before me, Lisa C Pierce, a Notary Public in and for the County of Hamilton, State of Indiana, taken on behalf of Gary L. Roberts, Roberts Pipeline Construction Company, Inc and Roberts Construction, Inc, at the Indiana Department of Transportation, 100 North Senate Avenue, Government Center North Room 755B, Indianapolis Marion County, Indiana, on the 10th day of April, 2007 commencing at the hour of 10 15 a m, pursuant to Applicable Rules of Procedure, with written notice as to time and place thereof

ALLIANCE COURT REPORTING  
P O BOX 78261  
INDIANAPOLIS, IN 46278-0261  
(317) 875-3914  
1 (877) 867-8600

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APPEARANCES

FOR "ROBERTS" John H Brooke  
BROOKE MAWHORR, P C  
112 East Gilbert Street  
Post Office Box 1071  
Muncie, Indiana 47308  
Phone. (765) 741-1375

FOR "HONEY CREEK" Richard R Wilson (Telephonically)  
Pa I D #25661  
127 Lexington Avenue  
Suite 100  
Altosoma, Pennsylvania 16601  
Phone (814) 944-5302

1 (10:15 a.m.)  
2 April 10, 2007  
3 MICHAEL MCGATHEY, having been first duly  
4 sworn to tell the truth, the whole truth and  
5 nothing but the truth, relating to said  
6 matter was examined and testified as follows:  
7 DIRECT EXAMINATION,  
8 QUESTIONS BY JOHN H. BROOKE:  
9 Q Would you state your name and spell your last name for the  
10 record, please.  
11 A Michael S. McGathey, M-c capital G-a-t-h-e-y.  
12 Q All right. And are you employed, sir?  
13 A Yes.  
14 Q And where are you employed?  
15 A By the State of Indiana, the Indiana Department of  
16 Transportation.  
17 Q Okay. What's your position with — with INDOT?  
18 A I am a Code Administrator.  
19 Q All right. Have you ever given a deposition before?  
20 A Yes.  
21 Q All right. So you understand I am going to ask you a series  
22 of questions today. You've been identified by the Department  
23 of Transportation as a person that may have some information  
24 or may be the best person to have some information for me  
25 about this issue involving the Honey Creek Railroad in Henry

1 and Rush County; do you understand that?

2 A Yes, sir.

3 Q Okay. And before we got started we had a conversation about

4 some of the other people in the department that are no longer

5 with the Department of Transportation, correct?

6 A Correct.

7 Q All right. It's my understanding that Venetta Keefe is no

8 longer with the Department of Transportation, correct?

9 A Correct.

10 Q And she worked in the rail section of the -- of INDOT; did

11 she not?

12 A Correct.

13 Q All right. And also Mr. Tom Beck is no longer with INDOT

14 either, correct?

15 A Correct.

16 Q Both of those were employees of some long-standing with the

17 Department?

18 A Yes.

19 Q All right. The positions that they occupied are -- have not

20 been filled; is that correct?

21 A The real office manager, Mr. Beck's former position, just

22 recently was filled by Michael D. Riley.

23 Q Okay. And Ms. Keefe's position --

24 A -- is vacant.

25 Q -- is vacant. Okay. All right. Well, as I said, I'm going

1 exist in INDOT's records, okay? Hopefully you can identify

2 them for me.

3 What -- the first one I have here is an Indiana

4 Department of Transportation Contract Invoice Voucher dated

5 7-27-03. This is for the Honey Creek Railroad. Can you tell

6 me what this document is, just for my own edification.

7 A It appears to be a claim voucher for a grade crossing

8 improvement program. It's a grant program that the Honey

9 Creek Railroad had been awarded this grant, and it's a claim

10 voucher for that grant.

11 Q Would this be something that you would be involved in?

12 A This is handled by -- in the Rail Freight Specialist area by,

13 formerly, Venetta Keefe.

14 Q Okay. Are you familiar with this -- this grant process to

15 improve the rail grade crossings?

16 A Yes.

17 Q Okay. Can you explain to me how that works.

18 A The -- the State has the grant program where at passive

19 locations you can -- either a railroad or a local public

20 agency can request improvements such as signage,

21 illumination, median barriers to improve the safety at -- at

22 a public grade crossing. They would apply to the Rail

23 Office. And it is evaluated and the applicant is -- is

24 awarded a grant.

25 Q Okay. So even -- could a governmental agency apply?

1 to ask you a series of questions today. I have a number of

2 documents that were produced by the Indiana Department of

3 Transportation concerning the Honey Creek Railroad in both

4 Henry and Rush County. I have a series of documents that I

5 want -- I'll have you identify for me and tell me what they

6 are so I can glean some information from these. Okay?

7 A Yes.

8 MR. BROOKE: Richard, off the record here.

9 (Thereupon, after an off-the-record discussion,

10 the following proceedings were had:)

11 MR. BROOKE: Okay. We'll go back on the record

12 now. All right.

13 Q Mr. McGathey, I've received a series of documents from INDOT,

14 and I think you have a set with you as well.

15 A Yes.

16 Q I don't want to spill your tea there so -- do you have any

17 personal knowledge about the Honey Creek rail line in either

18 Rush or Henry County?

19 A No.

20 Q All right. You have not been involved in any matters, code

21 enforcement matters, regarding the Honey Creek rail line, to

22 the best of your knowledge, have you?

23 A No.

24 Q Okay. All right. Well, let's go through and identify some

25 documents; help me understand some of the documents that

1 A Yes. A local public agency can.

2 Q Okay. All right. Interesting. All right. I've got some

3 other documents that were produced with this one. There's an

4 invoice from Railworks dated 7-10-03 as well as a Passive

5 Grade Crossing Improvement Location document entitled

6 Exhibit A. That doesn't look like it's dated. First of all,

7 the Railworks invoice, can you tell me what that is? Would

8 that be part of this grant process?

9 A It would be part of the grant process. It's not something

10 that I handle firsthand, but it would appear that you have to

11 document the work at the --

12 Q Okay.

13 A -- grade crossings.

14 Q Okay. All right. So the invoice -- Railworks would have

15 actually done the work, and this would have been submitted

16 with the -- the contract invoice voucher?

17 A Yes.

18 Q Okay. And then the -- the document, Exhibit A, Passive Grade

19 Crossing Improvement Program, is this a State document or is

20 this a Honey Creek document or who would --

21 A It -- it appears it would be a Honey Creek Railroad document

22 that they submitted as part of their grant request.

23 Q Okay. All right. So this would basically identify the grade

24 crossings that were being improved?

25 A Yes.

1 Q Okay. All right. And these were all -- actually these were  
2 for Honey Creek all in Rush County, correct?  
3 A Correct.  
4 Q Okay. All right. That just helps me identify what -- what  
5 I'm looking at; I appreciate that.  
6 And the grade crossing improvement; that's handled  
7 in the -- in what section?  
8 A Rail Freight Specialist area.  
9 Q Okay. All right. Very good.  
10 All right. I've got another document here called  
11 Executive Document Summary dated 7-22-02. Can you tell me  
12 what that covers? It involves Honey Creek Railroad. Have  
13 you seen one of these documents before?  
14 A I -- I have seen this type of document.  
15 Q Okay.  
16 A It's not a document that I -- I work with intimately.  
17 Q Okay. Would this be the -- the cover sheet for this thing  
18 called the Grant Agreement, which was right behind it in the  
19 order? Grant Agreement which is between the INDOT and Honey  
20 Creek Railroad dated 6-26 or 6-22-02? Does that look like  
21 that goes together?  
22 A Yes. It appears it is a cover sheet.  
23 Q Okay. Okay. All right. So this was -- this would have been  
24 the grant for the rail -- rail grade crossing improvements.  
25 A Correct.

1 Q Okay. All right. That's what I'm looking at. All right. I  
2 appreciate that.  
3 Do you know a person named G.W. or Bill Shelby with  
4 Railworks?  
5 A No, sir.  
6 Q Okay. All right. Okay. Here's another document that's  
7 called a document of -- Documentation of Shipper Perspective  
8 Number One. Have you seen one of those documents before?  
9 A No, sir.  
10 Q Okay. You don't -- you know what this is?  
11 A No, sir.  
12 Q Okay. All right. That answers that. All right. Go on  
13 down. I have a document that is -- it's received by the  
14 Department of Transportation March 29th, 2006 called a Annual  
15 Report of Class Two and Class Three Railroads. Can you tell  
16 me what that is?  
17 A Yes, sir. The rail carriers are required to file their  
18 Annual Report with our office. Those are generally received  
19 in the Rail Freight Specialist area. It -- it has general  
20 information concerning the carrier.  
21 Q Is this an annual filing, quarterly, or how often do they  
22 have to file this document?  
23 A Annually.  
24 Q Okay. And is it -- it's a -- is it a multipage document?  
25 A Yes, sir.

1 Q All right. 'Cause here's one that was received March 29th,  
2 2006. This looks like this is dated, signed by William Smith  
3 3-14-06. So I presume it's the second page of --  
4 A Second page, yes, sir.  
5 Q Okay. And this is the detailed information concerning the  
6 operation of the railroad?  
7 A Yes.  
8 Q Okay. This particular one identifies -- it says miles, total  
9 carloads originated on Line 664, correct?  
10 A Yes.  
11 Q All right. Total track miles, five-and-a-half to six,  
12 right? That's what it says.  
13 A Correct.  
14 Q All right. So this would identify the number of miles of  
15 track for the Honey Creek Railroad as of March 14th, 2006,  
16 correct?  
17 A Correct.  
18 Q All right. So there should be one of these for Honey Creek  
19 in the INDOT records for every year, right?  
20 A Correct.  
21 Q All right. All right. There's 2006.  
22 MR. BROOKE: We'll go ahead and make this an  
23 exhibit to the deposition. Okay?  
24 THE COURT REPORTER: Okay.  
25 MR. BROOKE: All right. And I'd like a copy so I

1 can put it back. All right?  
2 THE COURT REPORTER: Okay.  
3 (Exhibit 1 was marked for identification,  
4 and the following proceedings were had:)  
5 Q Okay. Next one I have is received by the Department of  
6 Transportation on March 15th, 2004 for Honey Creek Railroad  
7 -- Railroad, two pages, correct?  
8 A Correct.  
9 Q Okay. Looks like there was a change of form between 2004 and  
10 2006. Was there?  
11 A Yes.  
12 Q Okay. This also identifies the railroad and the -- does it  
13 identify the length of track? Yes, it does. On the first  
14 page.  
15 A Yes.  
16 Q All right. And it shows five-and-a-half miles on Page 1 of  
17 this -- of the 2004 report.  
18 A Correct.  
19 Q All right. I didn't see one in here for 2005. Would there  
20 be a reason if there wasn't one for 2005? Woops.  
21 A No.  
22 Q Okay. All right. Is -- is there a problem if a railroad  
23 doesn't file an Annual Report?  
24 A I believe, pursuant to statute, that they can be fined.  
25 Q Okay. All right.

13

1 MR. BROOKE: Okay. Go ahead and mark this one as  
2 Exhibit 2.  
3 (Exhibit 2 was marked for identification,  
4 and the following proceedings were had:)  
5 MR. BROOKE: All right.  
6 Q I want to hand you one that doesn't say "received" on it, but  
7 it's dated, signed by William Smith 2-12-03. So I presume  
8 this is the 2003 -- or actually it says Reporting Year 2002.  
9 When are these reports due generally?  
10 A I believe April 1st of the following year.  
11 Q Okay. So let's see. So Exhibit 2 would have been for the  
12 year 2005. Exhibit 1 would have been for the year 2003.  
13 Exhibit 1 is for the year 2005; that's what it says at the  
14 top. And Exhibit 2 would have been for the year 2003. So we  
15 don't have one for 2004 it looks like.  
16 A Evidently.  
17 Q I mean, I don't have any other documents other than --  
18 A Right.  
19 Q -- what you guys provided to me so --  
20 A Right. Well, what was in the office was copied.  
21 Q Okay. All right. All right. So we have a report for 2002  
22 filed in 2003 showing Honey Creek Railroad with  
23 five-and-a-half miles of track, correct?  
24 A Correct.  
25 Q Okay.

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14

1 MR. BROOKE: We'll mark that as an exhibit also.  
2 (Exhibit 3 was marked for identification,  
3 and the following proceedings were had:)  
4 Q I have another document that shows received March 25th, 2002,  
5 Honey Creek Railroad. It's the Annual Report for the  
6 reporting year 2001, signed by Mr. Smith on 3-20-02. And,  
7 for the record, can you identify this document.  
8 A It is for reporting year 2001 Annual Report.  
9 Q Okay. And it shows Honey Creek Railroad with six-and-a-half  
10 miles of track, correct?  
11 A Correct.  
12 Q All right. All right.  
13 MR. BROOKE: We'll go ahead and mark this one too.  
14 (Exhibit 4 was marked for identification,  
15 and the following proceedings were had:)  
16 Q All right. I've got --  
17 MR. BROOKE: Ready?  
18 Q I've got another one, another Annual Report for the year 2000  
19 for Honey Creek Railroad. Can you identify that for the  
20 record, please.  
21 A It is the Annual Report for the Honey Creek Railroad,  
22 reporting year 2000.  
23 Q Okay. And this shows -- this is signed -- received in the  
24 Department of Transportation March 14th, 2001. Signed by  
25 William E. Smith, 3-12-01, for the year 2000, correct?

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15

1 A Correct.  
2 Q All right. This one shows a total track mileage of  
3 thirteen-and-a-half with main line mileage of six-and-a-half,  
4 correct?  
5 A Correct.  
6 Q All right. Okay. And total number of private grade  
7 crossings, three. Identifies three in Sulfur Springs and one  
8 in Rushville, correct?  
9 A Correct.  
10 Q All right. I don't think any of the other reports identified  
11 Sulfur Springs for any of the grade crossings. Did they? As  
12 a matter of fact, the report for 2003 showed zero private  
13 grade crossings. Report for 2002 showed zero private grade  
14 crossings. And report for 2001 showed one private grade  
15 crossing, correct?  
16 A Correct.  
17 Q Okay. All right.  
18 MR. BROOKE: We'll go ahead and identify that one  
19 too.  
20 (Exhibit 5 was marked for identification,  
21 and the following proceedings were had:)  
22 Q Okay. Here's another one. And a Report of Class Two and  
23 Three Railroads for 1999, correct?  
24 A Correct.  
25 Q All right. And this is the same Annual Report we've been

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16

1 talking about in the last previous exhibits --  
2 A Right.  
3 Q -- for prior year, right?  
4 A Correct.  
5 Q Signed by William Smith on March 3rd, 2000 for the reporting  
6 year 1999, correct?  
7 A Correct.  
8 Q Shows a total track mileage of 13.5, right?  
9 A Correct.  
10 Q And private grade crossings, three in Sulfur Springs, one in  
11 Rushville, correct?  
12 A Correct.  
13 Q Okay. All right.  
14 (Exhibit 6 was marked for identification,  
15 and the following proceedings were had:)  
16 Q All right. Here's another one. Annual Report, reporting  
17 year 1998, for the Honey Creek Railroad.  
18 MR. WILSON: Excuse me, John.  
19 MR. BROOKE: Yes.  
20 MR. WILSON: Are we identifying these as exhibits  
21 as we go through?  
22 MR. BROOKE: Yes, they -- yes, we are.  
23 MR. WILSON: Okay, fine. I don't know that you've  
24 done that in the last couple of reports.  
25 MR. BROOKE: Okay.

17

1 MR. WILSON. I made the assumption that they would  
2 run consecutively. But maybe just for the basis of the  
3 record, it would be great if you could make reference to  
4 those --

5 MR. BROOKE: Okay.  
6 MR. WILSON. -- as to which exhibits are what.  
7 MR. BROOKE: When I get done I will identify them  
8 for the record. Okay?  
9 MR. WILSON: Fine, good. Okay, great.  
10 MR. BROOKE: All right.

11 Q This particular document received April 14th, 1999 by the  
12 Department of Transportation, correct?  
13 A Correct.  
14 Q This involves Honey Creek Railroad?  
15 A Correct.  
16 Q Signed by William Smith on 4-12-99?  
17 A Correct.  
18 Q All right. This shows Honey Creek Railroad with 13.5 total  
19 track miles?  
20 A Correct.  
21 Q And private grade crossings, three in Sulfur Springs and one  
22 in Rushville, right?  
23 A Correct.  
24 Q Okay.  
25 MR. BROOKE: Go ahead and mark this one too.

18

1 (Exhibit 7 was marked for identification,  
2 and the following proceedings were had:)

3 MR. BROOKE: For the purpose of the record we have  
4 identified and marked: Exhibit 1 is the Annual Report for  
5 the year 2005. Exhibit 2 is the Annual Report for the year  
6 2003. Exhibit 3 is the Annual Report for the year 2002.  
7 Exhibit 4 is the Annual Report for 2001. Exhibit 5 is the  
8 Annual Report for 2000. Exhibit 6 is the Annual Report for  
9 1999. Exhibit 7 is the Annual Report for 1998.

10 Q Correct, Mr. McGathey?  
11 A Correct.  
12 Q Okay. Indiana Department of Transportation did not produce  
13 any reports before 1998. Would you have those?  
14 A I'm -- I'm not exactly sure when they started the Annual  
15 Report --  
16 Q Okay.  
17 A -- filing.  
18 Q All right. Okay. Okay. All right. I've got another  
19 document here that's entitled Railroad Section Formal  
20 Petitions, red file not in file cabinet. It's two pages.  
21 Can you tell me what that is? Do you know what -- I'm just  
22 curious.  
23 A This appears to be a working file for formal cases filed with  
24 the Indiana Department of Transportation Rail Office.  
25 Q Okay. All types of cases?

19

1 A Yes, sir.  
2 Q Okay. Some of these are identified as -- for example, on  
3 this page we have a "less than legal." Do you know what that  
4 means?  
5 A Less than statutory clearance area, that if there's an  
6 infringement area in -- in a vertical or horizontal clearance  
7 area, a petition has to be filed.  
8 Q Okay. So the ones that aren't as tall as they're supposed to  
9 be or as wide as they're supposed to be, right?  
10 A Correct.  
11 Q Okay. All right. And there's another one that says  
12 "crossing exchange" up here (indicating). Do you know what  
13 that means?  
14 A I honestly do not.  
15 Q Okay. All right. And here's one that says "sound  
16 ordinance." Do you know what that refers to?  
17 A The -- years ago there was State Statute that allowed local  
18 -- local public agencies to petition either the Public  
19 Service Commission of Indiana or the Indiana Department of  
20 Transportation to not sound the train whistle or bell going  
21 through the municipality.  
22 Q Okay. All right. That still -- is that still -- is that  
23 still possible?  
24 A The Federal Railroad Administration took over jurisdiction.  
25 Q Oh, okay. All right. Okay. And then there's something else

20

1 identified as "health and safety." What would that refer to?  
2 A It's -- it's a -- a working reference to health and safety  
3 generally filed by the United Transportation Union just  
4 concerning health and safety of their members at a reporting  
5 point with the carrier.  
6 Q Oh, okay. Okay. All right. Okay.  
7 All right. How long have you been with the -- with  
8 the Department of Transportation?  
9 A I've been employed by the Indiana Department of  
10 Transportation since June 21, 1982.  
11 Q Oh, okay. I've got a letter here dated October 25th, 1990  
12 signed by John Cougan, is it?  
13 A Correct.  
14 Q All right. Did you know Mr. Cougan?  
15 A Yes.  
16 Q Okay. That's why I asked 'cause it's dated October 25th,  
17 '90.  
18 MR. BROOKE: For the record let's -- let's identify  
19 -- let's mark this as an exhibit, please.  
20 (Exhibit 8 was marked for identification,  
21 and the following proceedings were had:)

22 Q Okay. This will be Exhibit 8. This is a letter dated  
23 October 25th, 1990 to a Mr. R.A. Hunt with Conrail from John  
24 Cougan about a grade crossing repair, Sulfur Springs, Henry  
25 County. Would you have been familiar with this?

1 A The -- the letter was in our accounting files, evidently the  
2 districts furnished our office with a copy of.  
3 Q Okay. You know what this letter concerns?  
4 A No, sir.  
5 Q Okay. All right. It talks about a repair of a grade  
6 crossing and a meeting that was scheduled to repair a grade  
7 crossing, but you don't know exactly where on the Sulfur  
8 Springs line that was done, do you?  
9 A I have no firsthand knowledge.  
10 Q Okay. All right.  
11 Okay. All right. Okay. Let's move on to a  
12 document called Rail Highway Grade Crossing Accident/Incident  
13 Report. I have one here dated January -- covering January  
14 '94. Are you familiar with this document?  
15 A I'm familiar with the form, yes.  
16 Q Okay. And what is this particular form? What does it do?  
17 A It is a Federal Railroad Administration Rail Highway Grade  
18 Crossing Accident/Incident Report. If there's a car/train  
19 incident at a public crossing, the carrier has to go through  
20 the multiple choice form and complete it.  
21 Q Okay. All right. And if -- is this something that's  
22 required to be filed on a monthly basis?  
23 A Rail carriers are required to file on a monthly basis with  
24 our office, if there's been an incident, to file the FRA  
25 report. If no incidents have occurred during a respective

1 Q And this one just identifies US 36/State Road 1.  
2 A State Road 3.  
3 Q State Road 3. I'm sorry --  
4 A Yes.  
5 Q -- State Road 3. Yeah, okay. Would they also have to file  
6 one for the county roads if there had been no incident?  
7 A Yes, sir.  
8 Q Okay. All right. So would they have to file one for each  
9 and every intersection or just as a whole?  
10 A No, as a whole.  
11 Q Okay. They -- did Honey Creek in this -- in this document,  
12 January '94, didn't identify any USDOT AA grade crossing  
13 numbers, did they?  
14 A No.  
15 Q Okay. They didn't have any accidents either. But they  
16 didn't identify any grade crossings.  
17 A Correct.  
18 Q Okay. Is there any way to determine on this document, in  
19 January of '94, whether there had been even any activity on  
20 the railroad at this time?  
21 A No.  
22 Q Okay. They're not required -- are they required to submit  
23 one of these forms whether they're operating or not? I mean,  
24 if they're not operating, if they're not using the railroad,  
25 are they still required to submit this form?

1 month, year, they are to notify us on their letterhead or  
2 through an additional FRA form that says, "No incidents  
3 occurred during this month."  
4 Q Okay. In 1994 would they have been required to do that, or  
5 would they have been required to submit the form with "none"  
6 as this one was written?  
7 A In '94 they probably would have -- it would have been  
8 sufficient to file a monthly report with just stating  
9 "none."  
10 Q Okay. Now, this identifies -- this is for a rail crossing  
11 over a highway, correct?  
12 A Correct.  
13 Q All right. It wouldn't involve county roads, would it? You  
14 wouldn't have to file one of these forms if you had --  
15 crossing a county road, would you?  
16 A No, sir. A report would have to be filed on all public  
17 intersections, whether it be state, county, city or town.  
18 Q Oh, okay. Okay. Would they have to identify all the  
19 intersections?  
20 A They -- they -- they would probably identify it through the  
21 USDOT AAR Grade Crossing Identification Number, which would  
22 then provide the street or road name.  
23 Q Okay. But there is -- box eleven says "highway name or  
24 number."  
25 A Yes.

1 A If -- if they're not operating over it, no.  
2 Q Okay. So by filing this form then that would be a  
3 presumption that they were operating on the -- over the --  
4 the line?  
5 A Or a portion of their line. Somewhere the carrier was  
6 operating so they filed this monthly report.  
7 Q Okay. And in -- in this particular instance the Honey Creek  
8 Railroad has lines in both Henry and Rush County, right?  
9 A At -- in 1994?  
10 Q Well, at -- yes, in 1994.  
11 A '94.  
12 Q Identifies the counties.  
13 A It does identify the counties as Henry and Rush, yes.  
14 Q Okay. So if it would have been just operating in Rush  
15 County, it still would have had to file this form, correct?  
16 A Correct.  
17 Q Okay. Even though -- even if it wouldn't have been operating  
18 in Henry County, correct?  
19 A Correct.  
20 Q Okay. All right. That's what I --  
21 MR. BROOKE: Why don't we go ahead and just mark  
22 this -- well, I'll tell you what --  
23 Q Over the years the rail grade crossing report form has  
24 changed; has it not?  
25 A Correct.

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25

1 Q Okay. Somebody's got some job to do in Washington to change  
2 the forms, I guess, right?  
3 A Possibly.  
4 Q I won't ask you to answer -- I won't ask you to answer that  
5 question. Somebody's got to do something. All right.  
6 Okay. I have a series of these Rail Grade Crossing  
7 Reports submitted to me from INDOT going from 1994 up through  
8 2000 -- December of '06.  
9 A Yes, sir.  
10 Q Okay. You want to take a look at those; just make sure  
11 they're all the same -- same type of document. I'll just  
12 mark them as one.  
13 MR. BROOKE: Let's go off the records while he's  
14 examining those.  
15 (Thereupon, after an off-the-record discussion,  
16 Exhibit 9 was marked for identification,  
17 and the following proceedings were had.)  
18 MR. BROOKE: We'll go back on the record now here.  
19 Q You've had an opportunity to go through these -- all these  
20 reports that make up Exhibit 9; have you not?  
21 A Yes.  
22 Q Okay. These are all -- well, the form is different. They're  
23 all the same information; they're all the Rail Grade Crossing  
24 Incident Report forms, correct?  
25 A Correct.

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1 Q And these are all for the Honey Creek Railroad?  
2 A Correct.  
3 Q Okay. All right. Okay. We'll go ahead and enter that into  
4 the record as well.  
5 Are there any other reports that you're aware of  
6 that a railroad is required to file with the Indiana --  
7 Indiana Department of Transportation?  
8 A Carriers are required to file their Operating Time Table and  
9 Operating Rule Book.  
10 Q Okay. All right. I didn't notice a time table or rule book  
11 that was submitted to me as part of the Honey Creek  
12 documentation. Do you know if they have submitted that?  
13 A It -- it should have been included in this. It may have been  
14 an oversight on filing; I'm not sure.  
15 Q Okay. If Honey Creek would only operate on a seasonal basis,  
16 hauling grain to an elevator, would they have to have a time  
17 table as well?  
18 A Time table's very generic. Time table would probably -- that  
19 would be their time table is "we operate seasonally."  
20 Q Okay. All right. Where would the time table and rule book  
21 be found in INDOT?  
22 A Rail Office.  
23 Q Okay. Is that somewhere in this building we're in right  
24 here?  
25 A Yes, sir. Ninth floor.

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1 Q Okay. All right. Anything else that they're required to  
2 file?  
3 A Carriers are required to file their Resident Agent.  
4 Q Okay. All right.  
5 MR. WILSON: I didn't hear that last response.  
6 THE WITNESS: Resident Agent.  
7 MR. BROOKE: Resident Agent.  
8 MR. WILSON: Resident Agent. Okay, fine.  
9 THE WITNESS: And if I may, Mr. Brooke, I believe  
10 on the Annual Reports there may be a category for filing  
11 Resident Agent.  
12 Q Let's take a look. That would be on this, like, Exhibit 1  
13 through 7. It identifies the railroad officers.  
14 A Okay.  
15 Q Oh, and it does specify the Resident Agent. Okay.  
16 A Okay.  
17 Q All right. So it would have been on the Annual Report.  
18 Okay. Anything else?  
19 A No, sir.  
20 Q Okay. What about tariffs or rates? Are they required to  
21 file those?  
22 A No, sir.  
23 Q Okay. In some of these documents there are some financials  
24 -- income, expenses -- for the railroad. Do you know why  
25 those wouldn't have been filed?

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1 A No, sir.  
2 Q Okay. All right. Would Honey Creek be required to file or  
3 submit anywhere an identification of its track inventory,  
4 what type of track it is, where it is, that sort of thing,  
5 maps?  
6 A No filings with the State. There may be some type of -- I'm  
7 thinking with the Federal Railroad Administration. And I do  
8 not know any -- the CFR, that they may have to file what type  
9 of track classification it is.  
10 Q Okay. Nothing that the State requires?  
11 A No, sir.  
12 Q Okay. Any requirements for filing concerning maintenance of  
13 the tracks? The State require a railroad to file documents  
14 showing maintenance done?  
15 A No, sir.  
16 Q Okay. Do you know a Mike, is it, Scime? Scime?  
17 A Mr. Scime.  
18 Q Scime. Okay. Well, see, I really butchered that one, man.  
19 S-c-i-m-e. Okay. What's his position with INDOT?  
20 A Mr. Scime, at one time, was the Rail Office Manager. He is  
21 no longer with the State of Indiana.  
22 Q Okay. He was Rail Office Manager before Mr. Beck?  
23 A Yes, sir.  
24 Q Okay. And do you know where Mr. Scime is?  
25 A No, I do not.

29

1 Q Okay. All right.  
2 MR. BROOKE: Okay. All right. Let's go ahead and  
3 mark this letter just so I can identify it for the record.  
4 (Exhibits 10, 11 & 12 were marked for identification,  
5 and the following proceedings were had:)  
6 Q All right. I've got some documents that the court reporter  
7 has marked. Let's start with Exhibit Number 12. All right?  
8 For the purpose of the record, can you identify Exhibit  
9 Number 12. Some e-mails -- e-mail exchange, right?  
10 A It appears to be an e-mail from Lavon Marshall to Tom Beck.  
11 Q Okay. And who is Lavon Marshall?  
12 A She is a Rail Utility Technician with the Indiana Department  
13 of Transportation, Greenfield District.  
14 Q Okay. Is Lavon Marshall still with INDOT?  
15 A Yes.  
16 Q Okay. All right. And these are e-mails dated in February of  
17 2002 concerning the Honey Creek Railroad; are they not?  
18 A Yes.  
19 Q And these are e-mails that would be kept within the -- within  
20 the documents of INDOT?  
21 A Yes.  
22 Q Okay. Have you seen these e-mails before?  
23 A No.  
24 Q Okay. But you know they exist in your file, right?  
25 A Yes.

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1 Q Okay.  
2 MR. BROOKE: For the record, we'll -- Richard,  
3 these are a series of e-mails between Lavon Marshall to Tom  
4 Beck dated February 8th, 2002 and also February 19th, 2002  
5 concerning the construction on the Honey Creek Railroad where  
6 they were removing --  
7 MR. WILSON: -- track. Yep.  
8 MR. BROOKE: -- track. All right?  
9 MR. WILSON: Uh-huh.  
10 MR. BROOKE: All right.  
11 Q Next exhibit, which is Exhibit 10, is a letter dated March  
12 11th, 2002. For the record, can you identify that.  
13 A Mr. Michael Scine, Rail Section Manager, letter to Mr. Smith  
14 of the Honey Creek Railroad dated March 11th, 2002.  
15 Q Okay. All right. This letter is within the records of INDOT  
16 concerning Honey Creek Railroad; are they not?  
17 A Yes.  
18 Q Okay. Do you have any knowledge of this particular letter?  
19 A No.  
20 Q Okay. All right.  
21 MR. BROOKE: For the record, Mr. Wilson, this is  
22 the March 11th, 2002 letter from INDOT to Mr. Smith  
23 concerning the same matters as in the e-mails.  
24 MR. WILSON: Right.  
25 MR. BROOKE: Okay. All right.

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1 Q And Exhibit Number 11. Would you identify that for me,  
2 please.  
3 A Letter from Michael Scine, Railroad Section Manager, to  
4 Mr. Smith of the Honey Creek Railroad dated March 25th, 2002.  
5 Q Okay. All right. And this is a response to some information  
6 provided by Honey Creek Railroad that was in reply to the  
7 March 11th letter, correct?  
8 A I have not read through it. Do you --  
9 Q Okay.  
10 A Do you want me to --  
11 Q Yeah.  
12 MR. WILSON: I think the letter speaks for itself.  
13 MR. BROOKE: I just want to make sure we've got  
14 them in the right order here and it does identify it.  
15 MR. WILSON: Yeah. Uh-huh.  
16 MR. BROOKE: Okay.  
17 THE WITNESS: The March 25th letter basically  
18 states that -- fulfills the requirements of item one in  
19 Mr. Scine's March 11th letter.  
20 MR. BROOKE: Okay. Okay.  
21 Q Okay. Are you familiar with the Industrial Rail Service  
22 Fund? Do you know what that is?  
23 A Familiar with it, the Rail Office. The Rail Freight  
24 Specialist handles the Industrial Rail Service Fund grants.  
25 Q Okay.

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1 MR. BROOKE: Let's go ahead and mark that.  
2 (Exhibit 13 was marked for identification,  
3 and the following proceedings were had.)  
4 Q The court reporter's marked Exhibit Number 13. Would you  
5 identify that for the record, please.  
6 A It -- It's titled Exhibit 1, Executive Summary, Industrial  
7 Rail Service Fund, dated January 30 of 2001, awarding the  
8 Honey Creek Railroad an Industrial Rail Service grant.  
9 Q Okay. Project location?  
10 A Rushville, Indiana.  
11 Q Okay. And MP is milepost; is it not?  
12 A Milepost 23 to Milepost 18-and-a-half.  
13 Q Okay. I'm starting to learn of the lingo here. Do you have  
14 any familiarity or understanding of what this document is  
15 other than what it says?  
16 A Other than what it says, I have no other intimate knowledge.  
17 I did not craft it.  
18 Q Okay. Okay. For these particular grants, do you know if the  
19 railroad's required to submit a business plan or some other  
20 report as to what they're going to do with the grant?  
21 A I believe they submit an application which has a general  
22 scope of work.  
23 Q Okay. Where would -- where would the applications be kept  
24 then?  
25 A The applications would be in the Rail Office.

1 Q Okay. I didn't notice any of those applications in any of  
 2 these documents produced by INDOT. Would that -- were they  
 3 kept in a separate file or different location or -- I see the  
 4 grants being awarded. I see Executive Summaries and  
 5 contracts, but I don't see the applications themselves.  
 6 A Then, Mr. Brooke, I have no explanation --  
 7 Q Okay.  
 8 A -- Why it wouldn't be.  
 9 Q Okay. I didn't know. I thought it was kept in a different  
 10 place or whatever so -- okay.  
 11 Is there any document or report that Honey Creek is  
 12 required to file with the State showing where the -- its  
 13 connection to the Interstate rail system has been severed?  
 14 A No.  
 15 Q Okay.  
 16 A Not -- not that I'm aware of.  
 17 Q You don't -- okay.  
 18 Is it possible that we can take a look and see  
 19 where the Operating Time Table and Rule Book is with -- with  
 20 INDOT? Is that --  
 21 A Yes.  
 22 Q Could we get a copy of that for the -- for the purpose of the  
 23 deposition?  
 24 A Yes.  
 25 Q Okay.

1 MR. BROOKE: Do you have any problem with that,  
 2 Richard?  
 3 MR. WILSON: No, if they've got them available.  
 4 MR. BROOKE: Okay. Let's take a break for a  
 5 minute. Okay? I'll have him go up and see if he can find  
 6 the Operating Time Table and Rule Book for Honey Creek  
 7 Railroad. Okay?  
 8 We'll go off the record, allow him to -- I think  
 9 you've got to go upstairs, isn't it?  
 10 THE WITNESS: Correct.  
 11 (Thereupon, after a recess at 11:15 a.m.,  
 12 the following proceedings were had:)  
 13 MR. BROOKE: Let's go back on the record.  
 14 Q Mr. McGathey, we took a break. And during that recess you  
 15 went to try and find the Operating Time Table and Rule Book  
 16 for the Honey Creek Railroad, correct?  
 17 A Correct.  
 18 Q And were you successful in finding those documents?  
 19 A No. Where they would have been located in our office, they  
 20 were not present.  
 21 Q Okay. So, to the best of your knowledge, INDOT does not have  
 22 a copy of the Honey Creek Railroad Operating Time Table or  
 23 Rule Book, correct?  
 24 A Correct.  
 25 Q Okay. All right.

1 MR. BROOKE: I have no further questions then.  
 2 Mr. Wilson has some questions for you.  
 3 CROSS-EXAMINATION,  
 4 QUESTIONS BY RICHARD R. WILSON:  
 5 Q Okay. Mr. McGathey, am I pronouncing that right?  
 6 A You're close enough. That's fine, Mr. Wilson.  
 7 Q McGathey?  
 8 A Yes.  
 9 Q Okay, fine. Thank you. Now, the -- on the INDOT Web site,  
 10 you are noted as a Code Enforcement Officer, and you told us  
 11 this morning that you are a Code Administrator. Is there any  
 12 distinction between those two positions?  
 13 A No, not really.  
 14 Q What do you do as a Code Enforcement Officer?  
 15 A It -- it -- basically we do the field examinations or reviews  
 16 for potential violations concerning safety issues primarily  
 17 at rail highway intersections.  
 18 Q Okay. And in connection with that do you compile or submit  
 19 any information to the Federal Railroad Administration?  
 20 A No.  
 21 Q Who would do that at INDOT?  
 22 A In what respect, Mr. Wilson?  
 23 Q Well, for example, I'm looking at documents that are public  
 24 records on the USDOT FRA Web site, which it refers to USDOT  
 25 crossing inventory information.

1 A Yes.  
 2 Q And it talks about an initiating agency. And it refers to  
 3 the State in this particular situation, which happens to be a  
 4 Honey Creek Railroad crossing at Route 36. What -- what does  
 5 that reference to "initiating agency" refer to, if you know?  
 6 A The -- the Federal Railroad Administration Rail Highway  
 7 Intersection Inventory, one, is a voluntary program. The  
 8 question of initiating is if either the -- the rail carrier  
 9 or the State is designated the -- the entity that can change  
 10 part of this record, that whoever would change a part of the  
 11 federal record, it would indicate if it was initiated by the  
 12 State or the railroad.  
 13 Q Uh-huh. Do you know if the State of Indiana INDOT rail  
 14 section has made any initiate -- has initiated any changes  
 15 with respect to the Honey Creek Railroad inventory  
 16 information?  
 17 A The -- with respect to the Honey Creek Railroad, I would not  
 18 be sure, Mr. Wilson. We have initiated inventory record  
 19 changes. But I'm not exactly sure for specifically the Honey  
 20 Creek Railroad.  
 21 Q You have not personally done so.  
 22 A No.  
 23 Q Okay. In the course of your involvement with administering  
 24 crossing enforcement and safety issues in Indiana with  
 25 respect to grade crossings, do you have occasion to view STB

1 Abandonment Orders or issue -- or filings?  
2 A No. That would be handled through the rail -- Rail Freight  
3 Specialist, which years ago was referred to as Rail Planner.  
4 Q Okay. I see. Do you have any knowledge as to what they do  
5 with those orders or filings?  
6 A No.  
7 Q Okay. Let me see here.  
8 MR. WILSON: Oh, while we're marking things for  
9 identification, John, you went through some correspondence  
10 between INDOT and Mr. Smith. And I think you -- your last  
11 item that was marked for identification in that connection  
12 was Exhibits 10, 11, 12. Could I ask you, if you have the  
13 documents available there, to also pull a -- what appears to  
14 be a letter from Venetta Keefe to Mr. Smith dated May 24th,  
15 2002.  
16 MR. BROOKE: See if I can find that.  
17 MR. WILSON: If you can't find it, I will get with  
18 the court reporter afterwards and get her address, and I can  
19 send copies of those to you and to her.  
20 MR. BROOKE: Okay. May 24th, 2002. Okay.  
21 MR. WILSON: These are follow-on items that deal  
22 with the removal of track at the -- on the Sulfur Springs  
23 line.  
24 MR. BROOKE: Sure. And I'm -- and I'm just not  
25 seeing it in here.

1 it would be district, right?  
2 THE WITNESS: Correct.  
3 MR. BROOKE: Okay. Lavon Marshall works for the  
4 district office for INDOT. And so what Mr. McGathey was  
5 telling me was that it may be --  
6 THE WITNESS: And Mr. Lovall also. I heard  
7 Mr. Wilson reference Mr. Lovall.  
8 MR. BROOKE: Yeah, yeah. It may be in the  
9 information from the district office.  
10 MR. WILSON: Okay.  
11 MR. BROOKE: Which would have been -- it should  
12 have been this first section here.  
13 MR. WILSON: Let's do it this way, they're fairly  
14 short, let me just read them into the record. And then,  
15 Mr. McGathey, if you have any personal knowledge or  
16 information regarding the contents, you can -- you can inform  
17 me if that's the case.  
18 MR. BROOKE: Okay.  
19 THE WITNESS: Okay.  
20 MR. WILSON: Let's mark this as exhibit --  
21 Deposition Exhibit 14, what will be 14. And I'll provide a  
22 follow-up copy of the letter.  
23 MR. BROOKE: Okay.  
24 MR. WILSON: It's addressed to William Smith at the  
25 Honey Creek Railroad. It's dated May 24th, 2002, and it is a

1 MR. WILSON: Okay. And then there's a further  
2 e-mail between Mr. Sciae and a Mr. or Ms. Lovall dated August  
3 21, 2002 and a response to that e-mail, apparently from  
4 Mr. Lovall back to Mr. Sciae, dated August 22nd, 2002  
5 regarding the Honey Creek Railroad and its abandonment  
6 status. Those two documents we ought to -- I'd like those to  
7 be marked as Exhibit -- I guess they would go along as  
8 deposition exhibits.  
9 MR. BROOKE: Can I look in yours?  
10 THE WITNESS: Sure.  
11 MR. BROOKE: I'm going to look in his documents.  
12 THE WITNESS: I was wondering --  
13 MR. WILSON: You know what, let me see if I can't  
14 locate them. And if you have a fax number, I could fax them  
15 to you.  
16 MR. BROOKE: Let me see -- let me see if I can find  
17 them in his records. Okay?  
18 MR. WILSON: Okay.  
19 MR. BROOKE: 'Cause his aren't as messed up as  
20 mine.  
21 MR. WILSON: Uh-huh.  
22 THE WITNESS: Could -- could that have possibly  
23 been submitted by our district people, and I would not have a  
24 copy of it?  
25 MR. BROOKE: That might be. If it's Lavon Marshall

1 letter from Venetta Keefe, Project Manager.  
2 Thank you for providing the materials requested by  
3 the May 11th deadline. Enclosed are two supplemental loan  
4 agreements that transfer the collateral from the Sulfur  
5 Springs line to the Rush County line for industrial rail  
6 service along Number 12. Please execute both copies and  
7 return to Mr. Michael Sciae at the following address. And  
8 it's an Indiana DOT address. Once returned the contracts  
9 will be sent through the State signatory process which may  
10 take up to six weeks. If you have any questions, call me or  
11 Mr. Sciae, and the telephone number.  
12 Q Do you have any personal knowledge regarding the contents of  
13 this letter?  
14 A I have no personal knowledge.  
15 Q Okay, fine. The next let -- the next exhibit, which we would  
16 mark as Exhibit 15 -- make sure I'm getting them right -- is  
17 an e-mail of Wednesday, August 21, 2002, from Larry Lovall to  
18 Mike Sciae.  
19 And it says, Interested on where the abandonment  
20 status of this railroad. Recently a new company has  
21 relocated here and hazardous waste. We have received several  
22 inquiries on the safety issue surrounding the fact that the  
23 general public knows there are air trains possible on this  
24 track and do not slow down. Will not expect these Haz Mat  
25 trucks to be stopped at these crossings. Let me know,

1 Lovon.  
2 And then on Thursday, August 22nd, Mr. Scime return  
3 -- responds to Mr. Lovall: Larry, I spoke with Bill Saith,  
4 President of Honey Creek Railroad, this morning. In response  
5 to your e-mail I advised Bill that it was in his best  
6 interest to get his abandonment application filed with the  
7 STB as soon as possible. He expressed some hesitation to do  
8 this as he doesn't want the right of way to revert. And then  
9 in parentheses, as it would once the STB approves the  
10 abandonment, end of parentheses. As an alternative Honey  
11 Creek plans to instruct its maintenance of way contractor  
12 remove the cross bucks and any crossing signals and to  
13 conspicuously remove a section of rail on both sides of each  
14 crossing. Once this is done hazardous material trucks and  
15 school buses are no longer required to stop at the, quote,  
16 crossings, end quote. Bill, please let Larry Lovall of our  
17 Greenfield District when you plan to have this work started  
18 and completed and his phone number.  
19 Do you have any knowledge regarding those  
20 communications?  
21 A I have no personal knowledge.  
22 Q Okay. Do rail carriers routinely coordinate with your  
23 district offices to take crossings out of service when they  
24 discontinue or abandon their rail lines?  
25 A I would say yes.

1 Q How is that accomplished?  
2 A Specifically if it involves a State Route --  
3 Q Uh-huh.  
4 A -- they would have to approach the district for closure of  
5 the road to allow the rail equipment in to remove the  
6 crossing material.  
7 Q And -- and do they -- do they require an order or anything  
8 from the Indiana Public Utility Commission or from INDOT to  
9 authorize that closing of the crossing?  
10 A No, sir.  
11 Q It -- now, in some cases does that entail -- entail removing  
12 the rail and paving the crossing?  
13 A Yes.  
14 Q And then in other cases would it involve just the paving over  
15 of the rail -- existing rail line?  
16 A Possibly, yes.  
17 Q Okay. You don't have any requirement that in each case the  
18 rails and tracks be removed from the crossing.  
19 A No. It would be more at the district level. I would say  
20 with State -- State Highway -- Highways we would require or  
21 we would request that the material be removed.  
22 Q Uh-huh.  
23 A I -- I have noticed throughout the state that on city, town,  
24 counties that carrier's somewhat negligible and just pave  
25 over. Or it may be just the roadway agency itself paving

1 over.  
2 Q Uh-huh. Okay. Just a moment.  
3 With respect to the issue of the Operating Time  
4 Tables and Rule Books, can you refer me to the INDOT  
5 regulation or statutory requirement for the filing of those  
6 materials with the rail section?  
7 A Difficult off the top of my head but it is State Statute.  
8 Q Okay. Perhaps to save Mr. Brooke and myself a little  
9 research time, could you perhaps follow up our deposition  
10 here with a short letter to us just advising us what section  
11 -- what statutory section that is?  
12 A Be more than glad to. I can give you a call if you'd like.  
13 Q Okay. That would be helpful.  
14 A Okay.  
15 Q Appreciate that. Let's see.  
16 And it would be your testimony that you have no  
17 personal knowledge regarding the particular circumstances or  
18 conditions at each of the grade crossings on the Honey Creek  
19 Sulfur Springs line; is that correct?  
20 A Can -- can you state that again, Mr. Wilson?  
21 Q Yeah. You indicated that, when Mr. Brooke was questioning  
22 you, that you had no personal knowledge regarding the  
23 particular crossings on the Honey Creek line; is that  
24 correct?  
25 A That is correct. If -- if -- during a normal review, if

1 there was some type of violation, it would have been written  
2 up, and it would have been part of our public record.  
3 Q Okay. And as far as you know, as long as you've been with  
4 the -- been a -- an Enforcement Administrator, do you have  
5 any personal knowledge regarding any violations or  
6 enforcement actions that were taken by your section with  
7 respect to the Honey Creek Railroad Sulfur Springs line?  
8 A No, sir.  
9 Q Okay.  
10 MR. WILSON: I have no further questions, John.  
11 MR. BROOKE: I have no questions.  
12 MR. WILSON: Okay. Subject to that, you know,  
13 follow-up by Mr. McGathey, I think we can conclude.  
14 THE COURT REPORTER: Did you want a copy of the  
15 transcript?  
16 MR. WILSON: Oh, yes, ma'am.

AND FURTHER THE DEPONENT SAITH NOT.

(11:40 a.m.)

(Signature Waived)

MICHAEL MCGATHEY

STATE OF INDIANA     )  
                              )     SS  
COUNTY OF HAMILTON    )

I, Lisa C. Pierce, a Notary Public in and for the County of Hamilton, State of Indiana at large, do hereby certify that MICHAEL MCGATHEY, the deponent herein, was by me first duly sworn to tell the truth, the whole truth, and nothing but the truth in the aforementioned matter,

That the foregoing deposition was taken on behalf of Gary L. Roberts, Roberts Pipeline Construction Company, Inc., and Roberts Construction, Inc., at the Indiana Department of Transportation, 100 North Senate Avenue, Government Center North, Room 755B, Indianapolis, Marion County, Indiana, on the 10th day of April, 2007, commencing at the hour of 10 15 a.m., pursuant to Applicable Rules of Procedure;

That said deposition was taken down in stenograph notes and afterwards reduced to typewriting under my direction, and that the typewritten transcript is a true record of the testimony given by said deponent, and thereafter presented to said deponent for his signature, and that the signature of said deponent to his deposition was waived by the deponent and all parties present, the deposition to be read with the same force and effect as if signed by him

That the parties were represented by their

aforementioned counsel

I do further certify that I am a disinterested person in this cause of action, that I am not a relative or attorney of either party, or otherwise interested in the event of this action, and am not in the employ of the attorneys for either party.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this \_\_\_\_\_ of \_\_\_\_\_, 2007

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires  
April 13, 2013

County of Residence  
Hamilton

**MICHAEL MCGATHEY, APRIL 10, 2007, HONEY CREEK RAILROAD, INC. PETITION FOR DECLARATORY ORDER**

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**MICHAEL MCGATHEY, APRIL 10, 2007, HONEY CREEK RAILROAD, INC. PETITION FOR DECLARATORY ORDER**

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# EXHIBIT K

# EXHIBIT K-1

Annual Report of Class II & III Railroads  
Submitted to Indiana Department of Transportation  
Pursuant to IC 8-3-1-1(h)  
Reporting Year 2001  
Due Date April 1, 2002

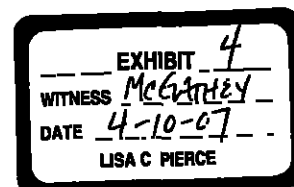
Corporate Profile

- 1) Corporate Name Honey Creek Railroad Inc.  
2) Address P.O. Box 646  
Morristown IN 46161  
3) Officers William E. Smith, President  
\_\_\_\_\_, Finance Officer  
\_\_\_\_\_, General Manager  
4) Phone Number 765-763-1215 Fax Number \_\_\_\_\_  
5) Year Incorporated 1993  
6) Indiana Resident Agent William E. Smith  
Resident Address P.O. Box 646  
Morristown IN 46161

RECEIVED  
MAR 25 2002  
TRANSPORTATION

Corporate Data

- 7) Number of Employees 0  
8) Total carloads originating or terminating on line 573  
9) Total carloads passing over line as bridge traffic 0  
10) Total Track Mileage 6 1/2  
Main Line Mileage 6 1/2  
(not including miles utilized through trackage rights agreements)  
Track Mileage at "Excepted" Level \_\_\_\_\_ Track Mileage at "Class I" Level \_\_\_\_\_  
Track Mileage at "Class II" Level 6 1/2 Track Mileage at "Class III" Level or Above \_\_\_\_\_  
11) Major Commodities shipped Corn  
Beans  
Wheat



over, please⇒

## Corporate Data

- 12) Gross Revenue 52499
- 13) List four largest stockholders and percentage held  
William F. Smith 100%  
\_\_\_\_\_%  
\_\_\_\_\_%  
\_\_\_\_\_%
- 14) Total number of Public Grade Crossings 89  
Gates 0 Flashers 1 Stop Signs 0 Crossbucks 8 Other 0  
(classified according to highest level of warning device)
- 15) Total number of bridges are on the line 0  
14 feet or less \_\_\_\_\_ 15 - 25 feet \_\_\_\_\_ 26 feet and longer \_\_\_\_\_
- 16) Total number of Private Grade Crossings 1
- 17) Frequency of service on line 2 twice a Month
- 18) Rolling Stock Information  
Number of Locomotives owned/leased 2  
Number of Freight Cars owned/leased 0

## Statement Verifications

Name William F. Smith  
Signature William F. Smith WFS  
Title Pres  
Date 3-20-02

over, please⇒

# EXHIBIT K-2

**Annual Report of Class II & III Railroads**  
 Submitted to Indiana Department of Transportation  
 Pursuant to 45-8-3-1-1(a)  
 Reporting Year 2000  
 Due Date: April 2, 2001

**Corporate Profile**

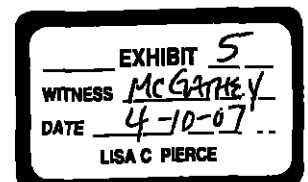
- 1) Corporate Name Honey Creek Railroad
- 2) Address P.O. Box 646  
Morrisstown IN 46161
- 3) Officers William E Smith President  
\_\_\_\_\_, Finance Officer  
William E. Smith, General Manager
- 4) Phone Number 765-763-1215 Fax Number 765-938-5558
- 5) Year Incorporated 1993
- 6) Indiana Resident Agent William E. Smith  
Resident Address 649 W Foster Heights Dr  
Rushville IN 46173



*"Link"*  
 765-932-2981  
 Rushville Office  
 765-904-5467  
 cell

**Corporate Data**

- 7) Number of Employees 0
- 8) Total carloads originating or terminating on line 604
- 9) Total carloads passing over line as bridge traffic 0
- 10) Total Track Mileage 13.5  
Main Line Mileage 6.5  
(not including miles utilized through trackage rights agreements)  
Track Mileage at "Excepted" Level 6.5 Track Mileage at "Class I" Level 0  
Track Mileage at "Class II" Level 0 Track Mileage at "Class III" Level or Above 0
- 11) Major Commodities shipped Shell Corn  
Soybeans



Email mgrain@lightbound.com

over, please⇒

## Corporate Data

- 12) Gross Revenue \_\_\_\_\_
- 13) List four largest stockholders and percentage held  
William E Smith 100 %  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- 14) Total number of Public Grade Crossings \_\_\_\_\_  
Gates 0 Flashers 2 Stop Signs 0 Crossbucks 15 Other 0  
(classified according to highest level of warning device)
- 15) Total number of bridges are on the line,  
14 feet or less \_\_\_\_\_ 15 - 25 feet \_\_\_\_\_ 26 feet and longer \_\_\_\_\_
- 16) Total number of Private Grade Crossings 3 Sulphur Springs / 1 Rushville
- 17) Frequency of service on line 2 to 3 a Week
- 18) Rolling Stock Information  
Number of Locomotives owned/leased 2  
Number of Freight Cars owned/leased 0
- 19) Attach detailed map showing track location that identifies communities and businesses currently served Provide a track chart showing rail weight, location of bridges, road intersections, interchange locations, locations of double or triple track sidings, names of other railroads with which interchanges occur and any other information typically found on a track chart

## Statement Verifications

Name William E Smith  
Signature William E Smith  
Title Pres.  
Date 13-12-01

over, please⇒

# EXHIBIT K-3

## BECK, TOM

---

From: MARSHALL, LAVON  
Sent: Tuesday, February 19, 2002 8 44 AM  
To: BECK, TOM  
Subject: RE. Honey Creek Railroad

I hate to be a pest Were you able to look at this last week? Just wondering.

—Original Message—

From: BECK, TOM  
Sent: Friday, February 08, 2002 14 40  
To: MARSHALL, LAVON  
Subject: RE Honey Creek Railroad

LaVon. Thank you for the information about this line. I want to talk to my boss Mike Scime about this situation I have looked at the loan contract INDOT has with Honey Creek railroad. We loaned them \$200,000 in 1993 to purchase and rehabilitate the Sulphur Springs line. We took a security interest in the line. The rail and the underlying property serve as the collateral for the mortgage. In the contract, it clearly states that Honey Creek cannot take any of the track away without asking INDOT for permission. Until their loan is paid off, I believe we hold title since the rail line is the security for the mortgage. Like I said - I want to talk to my boss about this first I have not talked with Bill Smith I think we might want to go take a look at the situation We may drive up there early next week I'll let you know as we proceed with this situation Thanks again for letting us know about this situation

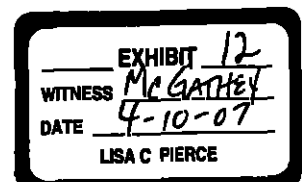
- Tom Beck

—Original Message—

From: MARSHALL, LAVON  
Sent: Friday, February 08, 2002 10 49 AM  
To: BECK, TOM  
Subject: Honey Creek Railroad

A couple weeks ago we inquired about the Honey Creek railroad and if it was abandoned. I recently talked to Bill Smith who informed me that he was ripping rail from just North of SR 38 where it hooks into NS and selling the rail to make improvements to the line that goes to Rushville. I said that made sense but has he filed for abandonment He stated that he owned not leased the rail and did not think he needed permission I gave him your number for more particulars Has he contacted you? He has removed the rail already. What is your determination of this matter? Let me know.

LaVon



# EXHIBIT L

Before the  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 34869

HONEY CREEK RAILROAD, INC  
PETITION FOR DECLARATORY ORDER

The deposition upon oral examination of MARK THORNBURG  
a witness produced and sworn before me Lisa C Pierce a  
Notary Public in and for the County of Hamilton, State of  
Indiana, taken on behalf of Gary L Roberts, Roberts Pipeline  
Construction Company, Inc and Roberts Construction, Inc, at  
the Henry County Courthouse, 1215 Race Street, Second Floor,  
New Castle, Henry County, Indiana, on the 12th day of  
February 2007, commencing at the hour of 1:15 p.m.  
pursuant to Applicable Rules of Procedure, with written  
notice as to time and place thereof

ALLIANCE COURT REPORTING  
P O BOX 78261  
INDIANAPOLIS, IN 46278-0261  
(317) 875-3914  
1 (617) 867-8600

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## APPEARANCES

FOR "ROBERTS" John H Brooke  
BROOKE WAMHORN, P C  
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Post Office Box 1071  
Muncie, Indiana 47308  
Phone (765) 741-1375

FOR "HONEY CREEK" Richard R Wilson  
Pa I D #25661  
127 Lexington Avenue  
Suite 100  
Altoona, Pennsylvania 16601  
Phone (814) 944-3201

## INDEX OF EXAMINATION

DIRECT EXAMINATION  
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(Exhibits 1 through 7 were marked for identification,  
and the following proceedings were had:)

(1:15 p.m.)  
February 12, 2007

MARK THORNBURG, having been first duly  
sworn to tell the truth, the whole truth and  
nothing but the truth, relating to said  
matter was examined and testified as follows:

## DIRECT EXAMINATION,

## QUESTIONS BY JOHN H. BROOKE:

Q Mr. Thornburg, my name is John Brooke. I'm an attorney from  
Muncie. And this is Richard Wilson. He's an attorney from  
somewhere in Pennsylvania.

MR. WILSON: Altoona and Pittsburgh.

Q Altoona and Pittsburgh, Pennsylvania. Have you ever given a  
deposition before?

A No.

Q All right. Well, this is your first experience. We'll try  
to make it as pleasant as possible.

A I hope so, yeah.

Q I'm gonna -- all it is, I'm going to ask you a series of  
questions today. And I just want to get an answer from you.  
It can be "yes"; it can be "no"; it can be "I don't know."  
Whatever the answer is, you just answer -- answer audibly.  
Okay?

1 A Uh-huh.  
 2 Q You have to answer "yes" or "no."  
 3 A Yes.  
 4 Q Because the court reporter can't -- she's taking a record of  
 5 all this. Okay?  
 6 A Okay.  
 7 Q And so I don't know how to spell "uh-huh."  
 8 A Okay.  
 9 Q So let's -- just yes or no would be -- and I'll remind you.  
 10 Okay? It's no big deal. But I'll remind you. It's -- it's  
 11 almost like we've having a conversation here, but we need to  
 12 keep a clear record. Okay?  
 13 A Yes.  
 14 Q Very good. There you go. You caught yourself excellent.  
 15 MR. WILSON: That's quickly.  
 16 Q Quick study. If at any time you need to take a break, please  
 17 don't hesitate to ask. This shouldn't be very long. But I  
 18 just -- if you need to take a break, we're more than happy  
 19 to. Okay?  
 20 A Yes.  
 21 Q All right. If any time I ask a question that's unclear to  
 22 you, which happens a lot 'cause I get twisted up, ask me to  
 23 restate it or rephrase it. Okay?  
 24 A Okay.  
 25 Q All right. Very good. All right. Mr. Wilson will also ask

1 what those documents are. Exhibit 1. We'll talk about that  
 2 one first.  
 3 A Okay. At the time that this happened, I really wasn't the  
 4 supervisor.  
 5 Q I understand that.  
 6 A Yeah. This here is -- he actually drove the truck. And he  
 7 was hauling the mix and things to the paver.  
 8 Q Okay. "He" being who?  
 9 A He'd be Todd Sharrett.  
 10 Q Okay. And these would be records that would be routinely  
 11 kept in the Highway Department's --  
 12 A Yes.  
 13 Q Okay. And you're familiar with these types of records,  
 14 correct?  
 15 A Yes. Yes.  
 16 Q Okay. What does that record tell me?  
 17 A It says that we was on 400 North west of 75 West. And this  
 18 is -- right here (indicating) was the pug mix, which is the  
 19 mix we put down, and how many loads he hauled.  
 20 Q That's the mix used for paving roads, right?  
 21 A Yes. At this time, yes.  
 22 Q At that time, all right. And then it describes the different  
 23 roads that he was on putting -- bringing -- delivering the  
 24 mix to it, correct?  
 25 A Yes.

1 you some questions when I get done. All right?  
 2 A Okay.  
 3 Q All right. Very good. Are you employed, sir?  
 4 A Yes.  
 5 Q And where are you employed?  
 6 A Henry County Highway.  
 7 Q Okay. And what's your position with the Henry County Highway  
 8 Department?  
 9 A I'm actually the road supervisor.  
 10 Q How long have you been a road supervisor?  
 11 A Three years.  
 12 Q All right. What does a road supervisor do?  
 13 A It -- actually it -- I supervise the road work and -- being  
 14 done at the highway, paving and stuff like that.  
 15 Q Okay. How long have you worked for the Henry County Highway  
 16 Department?  
 17 A Twenty-eight years.  
 18 Q Before you became road supervisor, what did you do?  
 19 A I was a heavy equipment operator.  
 20 Q Okay. All right. As part of the road -- part of your duties  
 21 as road supervisor, do you keep records of the -- of the men  
 22 that do work and what they do and that sort of thing?  
 23 A Yes.  
 24 Q Okay. I'm going to hand you a series of documents entitled  
 25 or numbered Exhibits 1 through 7 and ask if you can identify

1 Q And the quantity, 15.9, is that yards?  
 2 A No. That's tons.  
 3 Q Tons. Okay.  
 4 A Yes.  
 5 Q All right. So 15.9 tons of pug mix were delivered to these  
 6 variation locations?  
 7 A Yes.  
 8 Q Okay. And 132, the activity code, I think. What does that  
 9 signify?  
 10 A That -- paving.  
 11 Q Okay. All right. And then -- what's 322 (sic) at the bottom  
 12 there?  
 13 A I don't know about that.  
 14 Q Okay. All right. All right. Let's take a look at Exhibit  
 15 Number 2. And who is that for?  
 16 A That's Tony Burke.  
 17 Q Okay. And what's Tony Burke's job?  
 18 A He's driving the truck, the same as Todd was.  
 19 Q Okay.  
 20 A To the paver.  
 21 Q All right. And does it also identify the different roads?  
 22 A Yes. And it's 400 North between 75 West and 400 -- that says  
 23 400 West.  
 24 Q Okay. All right. And so they were also doing paving,  
 25 activity code --

1 A Yeah. 130 -- I'm not sure what this is though, the -- the  
2 332.  
3 Q Okay. All right. Let's go to the next one.  
4 A Okay.  
5 Q Exhibit Number 3. Who's that for?  
6 A Looks like Tom Hardeman.  
7 Q Okay.  
8 A He prob --  
9 Q What was his job?  
10 A He was a heavy equipment operator. I would say he probably  
11 -- yeah, 111 -- was our roller. He was on the roller.  
12 Q All right. Doing paving work on County Road 400 North?  
13 A 400 North between 300 West and 75 West.  
14 Q Okay. Now, all these records so far have been dated too,  
15 haven't they?  
16 A Yes.  
17 Q Okay. What are they dated?  
18 A This one here was 8-9-96.  
19 Q Okay. All right. Let's go to the next one. Okay. And  
20 that's a record for who?  
21 A Rick Miller.  
22 Q All right.  
23 A He --  
24 Q And what did Rick -- what was Rick Miller's job?  
25 A 110 was the operator on the machine.

1 A Yes.  
2 Q That's why it's only 8.65 tons?  
3 A Yes. That's why I was looking. 'Cause when -- before he  
4 retired he was in a tandem. But he was in -- Truck 79 was a  
5 single-axle, yes.  
6 Q Okay. All right. And that was also on County Road 400  
7 North. Does he identify the roads that he was on?  
8 A He's saying 175. But that -- I --  
9 Q 400 North --  
10 A That must be 125.  
11 Q -- east of 175 West?  
12 A Yeah. Okay.  
13 Q All right. 400 North west of 175 West. 400 North west of  
14 300 West. Okay. All right. And then the from and to  
15 were --  
16 A Actually, this would be -- this would be 75 West --  
17 Q 75 --  
18 A -- instead of one, yeah.  
19 Q Okay.  
20 A He just messed up.  
21 Q Okay. All right. Let's go to the next one, Number 6. Can  
22 you tell me whose card that is?  
23 A Well, I'm thinking it's Rick Howe.  
24 Q Okay.  
25 A Can barely read it. But I think that's what it is.

1 Q On the paver?  
2 A On the paver. Yes.  
3 Q Okay. Okay. And so he's doing paving work, 132.  
4 A Uh-huh.  
5 Q On County Road 400 North between what roads?  
6 A 75 West and 125 West. And 400 North between 125 West and 200  
7 West.  
8 Q Okay. And that also was done at or around the same time in  
9 August of '96?  
10 A Yes.  
11 Q Okay. All right. Next one, number five. Who's this for?  
12 A This is Harold Gray.  
13 Q Okay. What was Harold's job?  
14 A Truck driver.  
15 Q All right.  
16 A Some roads and everything so --  
17 Q Okay. But he didn't put the pug mix down. What was he  
18 doing?  
19 A He was actually -- he was in Truck 79. He didn't put the  
20 naze. But that's -- that's what he was hauling.  
21 Q Okay.  
22 A I'm pretty sure he was in Truck 79.  
23 Q Okay. Is that just a single-axle --  
24 A Yes.  
25 Q -- truck?

1 Q All right.  
2 A And he was also in a single-axle, Number 72.  
3 Q All right. He was bringing mix also to the job site --  
4 A Yes.  
5 Q -- too. And once again 400 West west from 75 West?  
6 A Yes.  
7 Q Okay. All right. Next one.  
8 A This is Jimmy Williams.  
9 Q All right.  
10 A Same thing.  
11 Q He was bringing mix --  
12 A Uh-huh.  
13 Q -- to that?  
14 A Uh-huh.  
15 Q "Yes," right?  
16 A Yes. Yes, I'm sorry.  
17 Q Very good. No problem. Now, were you working on this crew  
18 also?  
19 A Yes.  
20 Q Okay. What was your position on this crew?  
21 A I was in the oil distributor, which was the oil that goes  
22 down before we put the pavement on it.  
23 Q Okay. We don't seem to have your time card in there.  
24 A Apparently the 132, we -- at that time we was sometimes chip  
25 sealing, which is 131. So I was in the oil distributor. And

1 I'd probably go hear, spread the oil, and then I'd go  
2 somewhere place else to work on chip sealing.  
3 Q Okay.  
4 A So I wasn't with them all the time.  
5 Q Okay. All right. Do you recall doing some paving on  
6 400 North south of Sulphur Springs at the various  
7 intersections out there in the county?  
8 A The only one I know of is just in between 300 and 75 West.  
9 So --  
10 Q Okay. All right. And let me -- let me see if maybe we've  
11 got a map here that might help with you this. Which would be  
12 better?  
13 Okay. I'm going to show you what's been identified  
14 in a -- in a previous deposition --  
15 A Okay.  
16 Q -- Exhibit Number 3. And this is a map of Jefferson  
17 Township. It identifies a railroad line going from around --  
18 just east of State Road 3 all the way up to the Sulphur  
19 Springs -- to that elevator up there. Are you familiar with  
20 that?  
21 A Yes.  
22 Q You know where that railroad line runs?  
23 A Yes.  
24 Q Okay. And this is State Road 36, this dark line here. All  
25 right?

1 A Uh-huh. Yes.  
2 Q Are you familiar with that?  
3 A Yes.  
4 Q All right. Now, where would 400 North be? Is it one mile  
5 south of 36? Or mile -- maybe a little more than a mile?  
6 A Yeah. Little more than a mile, yeah.  
7 Q Okay. Would it be this road right here (indicating) that  
8 says 331 on it?  
9 A Yes. I -- probably. I --  
10 Q Okay.  
11 A Without it saying it, I really don't --  
12 Q Okay.  
13 A I'm sure this is it, yes.  
14 Q Okay. All right. And then where would 25 West be?  
15 A Be 125.  
16 Q 125. I'm sorry, 125.  
17 A It would be right here (indicating).  
18 Q Okay.  
19 A This is 125 (indicating).  
20 MR. WILSON: Which one?  
21 THE WITNESS: Right here.  
22 MR. WILSON: Okay.  
23 Q All right. Do you recall working on the Highway Department  
24 crew when they were paving over the rail crossings on 125 and  
25 400?

1 A The only one I really remember is 400 North. We went across  
2 400 North --  
3 Q Okay.  
4 A -- on the railroad tracks on it.  
5 Q Okay. And why do you remember that?  
6 A I don't know. I just -- I just --  
7 Q Just do?  
8 A That's the one I remember, yes.  
9 Q Okay. Was there any -- any -- ever any discussion that you  
10 knew of about why that railroad track was being paved over?  
11 A No. I was -- we was just told to go do it and we did it.  
12 So --  
13 Q Okay. And you would have paved over at or around August of  
14 '96. That's what --  
15 A Probably. 'Cause --  
16 Q Okay.  
17 A I really don't know what the year was or the date or  
18 anything.  
19 Q Okay.  
20 A I can't remember all that.  
21 Q All right. But these all would have been people on -- on the  
22 crew that --  
23 A Yes. That would be on the crew, yes.  
24 Q Right.  
25 A Yes.

1 Q All right. Did there ever come a time when you were required  
2 to go out and chip away the asphalt for the railroad so that  
3 they could use the line?  
4 A No.  
5 Q Okay. You remember any comments or discussion about that in  
6 the Highway Department, about having to open up the line  
7 again 'cause they wanted to use it?  
8 A No.  
9 Q All right. Do you know if County Road 400 North has been  
10 paved since 1996?  
11 A Only across here, we did. And it was chip sealed before  
12 that. It was -- it's a different kind of mix and different  
13 kind of thing. But it's never been -- it hadn't been paved  
14 -- paved since then, I guess.  
15 Q Okay. So there would have been a chip and seal after 1996  
16 put on there?  
17 A No. That would be -- be before. I'm sorry.  
18 Q Okay, before.  
19 A Yes, before.  
20 Q So the process was a chip and seal before 1996, then it was  
21 paved over in '96?  
22 A Yes.  
23 Q Okay. And you don't know that it's been paved again since  
24 then?  
25 A No.

1 Q All right. You haven't been out there to pave it.  
 2 A No, I have not.  
 3 Q And your three year as road supervisor, you haven't gone out  
 4 there to repave it, have you?  
 5 A No. No.  
 6 MR. BROOKE: Okay. All right. I have no further  
 7 questions.  
 8 MR. WILSON: I have no questions.  
 9 MR. BROOKE: That's it. See how easy that was?  
 10 THE WITNESS: That was great.  
 11 (Thereupon, after an off-the-record discussion,  
 12 the following proceedings were had:)  
 13 MR. BROOKE: You have the opportunity to read and  
 14 sign the deposition just to make sure she got everything  
 15 accurate. Or you can just waive that signature. Probably  
 16 just -- no longer than it was, you can probably waive your  
 17 signature.  
 18 THE WITNESS: That would be fine.  
 19 MR. BROOKE: You won't have to read it again.  
 20  
 21 AND FURTHER THE DEPONENT SAITH NOT.  
 22 (1:25 p.m.)  
 23  
 24 (Signature Waived)  
 25 \_\_\_\_\_  
 MARK THORNBURG

1 I do further certify that I am a disinterested person  
 2 in this cause of action, that I am not a relative or attorney  
 3 of either party, or otherwise interested in the event of this  
 4 action, and am not in the employ of the attorneys for either  
 5 party  
 6 IN WITNESS WHEREOF I have hereunto set my hand and  
 7 affixed my notarial seal this \_\_\_\_\_ of \_\_\_\_\_, 2007  
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NOTARY PUBLIC

My Commission Expires  
 April 13, 2013  
 County of Residence  
 Hamilton

1 STATE OF INDIANA )  
 2 ) SS  
 3 COUNTY OF HAMILTON )  
 4  
 5 I, Lisa C. Pierce, a Notary Public in and for the  
 6 County of Hamilton, State of Indiana at large, do hereby  
 7 certify that MARK THORNBURG the deponent herein, was by me  
 8 first duly sworn to tell the truth, the whole truth, and  
 9 nothing but the truth in the aforementioned matter.  
 10 That the foregoing deposition was taken on behalf of  
 11 Gary L. Roberts Roberts Pipeline Construction Company, Inc  
 12 and Roberts Construction, Inc., at Herry County Courthouse,  
 13 1215 Race Street, Second Floor, New Castle, Henry County,  
 14 Indiana, on the 12th day of February, 2007, commencing at the  
 15 hour of 1 15 p m, pursuant to Applicable Rules of Procedure  
 16 That said deposition was taken down in stenograph notes  
 17 and afterwards reduced to typewriting under my direction, and  
 18 that the typewritten transcript is a true record of the  
 19 testimony given by said deponent, and thereafter presented to  
 20 said deponent for his signature, and that the signature of  
 21 said deponent to his deposition was waived by the deponent  
 22 and all parties present, the deposition to be read with the  
 23 same force and effect as if signed by him  
 24 That the parties were represented by their  
 25 aforementioned counsel

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<p><b>6</b></p> <p>6 [2] 3:8 11:21</p>	<p><b>F</b></p> <p>familiar [2] 7:13 13:19 14:2</p>	<p><b>I</b></p> <p>identification [1] 4:1</p>	<p><b>K</b></p> <p>Kim [1] 12:8</p>
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# COUNTY HIGHWAY DAILY WORK REPORT

CO-1A-HWY

11/86

Name of Employee: T. SHARRETT 243 05

Work Category 21

Date: 5 8 9 9 9 9

ACTIVITY LOCATION					LABOR		EQUIPMENT			MATERIALS DELIVERED*		
DESCRIPTION	FROM	TO	MILES	SECTION NUMBER	ACTIVITY CODE	HOURS	NUMBER	ODOMETER READING	MILES HOURS	TYPE	CODE	QUANTITY
400N	W. OF	75W		14	132	8	121	29260		Pug Mix		15.90
					"			29434		Pug Mix		15.00
					"					Pug Mix		15.80
					"					Pug Mix		15.90
					"					Pug Mix		15.90
					"					Pug Mix		14.15
400N	W. OF	125W		14	132					Pug Mix		14.80
					"					Pug Mix		16.00
400N	W. OF	Suc. SR Lp.		14	132					Pug Mix		15.00
		005407			332		138.45		18/10			

ADDITIONAL COMMENTS		ACCOMPLISHMENT (Daily Production)		OTHER MATERIALS/SUPPLIES* (Attach Delivery/Sales Tickets)			
		Activity Code	Total Units	Equipment Number	Material Type	Code	Quantity
		132	8 HRS				
ME IN	7:00 A.M.						
ME OUT	3:00 P.M.						

BOYCE CO MUNCIE, IN-1126

EXHIBIT

WITNESS. THORNBURG

DATE. 2-12-07

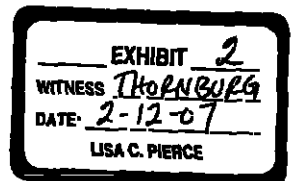
LISA C. PIERCE

COUNTY HIGHWAY DAILY WORK REPORT

C/O--1A--11WY

11/86

Name of Employee: T. Burke 241 110 Work Category 211 Date: 8 9 91



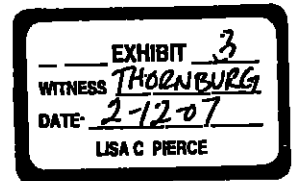
ACTIVITY LOCATION				LABOR		EQUIPMENT			MATERIALS DELIVERED*			
DESCRIPTION	FROM	TO	MILES	SECTION NUMBER	ACTIVITY CODE	HOURS	NUMBER	ODOMETER READING	MILES HOURS	TYPE	CODE	QUANTITY
400 N	75 W	400 W			132	8	107	86695 86491	2.64	Pug Mix		17.55
										Pug Mix		15.90
										Pug Mix		15.80
										Pug Mix		15.90
										Pug Mix		16.45
										Pug Mix		15.30
005407					332	127.50			1810			15.10
												15.50
ADDITIONAL COMMENTS				ACCOMPLISHMENT (Daily Production)			OTHER MATERIALS/SUPPLIES* (Attach Delivery/Sales Tickets)					
				Activity Code	Total Units		Equipment Number	Material Type		Code	Quantity	
				132	8hr		107	Diesel		1012	49	
ME IN 7:00 AM												
ME OUT 2:00 PM												

# COUNTY HIGHWAY DAILY WORK REPORT

Name of Employee: Steve Thompson 202 29

Work Category ☒ F

Date: ☐ 8 ☐ 9 ☒ 10



ACTIVITY LOCATION					LABOR		EQUIPMENT			MATERIALS DELIVERED*		
DESCRIPTION	FROM	TO	MILES	SECTION NUMBER	ACTIVITY CODE	HOURS	NUMBER	ODOMETER READING	MILES HOURS	TYPE	CODE	QUANTITY
400g	75m	202			132	8	111	1563				
								1560	7			
005407												

ADDITIONAL COMMENTS		ACCOMPLISHMENT (Daily Production)		OTHER MATERIALS/SUPPLIES* (Attach Delivery/Sales Tickets)			
		Activity Code	Total Units	Equipment Number	Material Type	Code	Quantity
Steve Thompson		132	8	111			
TIME IN 7:00am							
TIME OUT 3:00pm							

ADDITIONAL COMMENTS		ACCOMPLISHMENT (Daily Production)		OTHER MATERIALS/SUPPLIES* (Attach Delivery/Sales Tickets)			
		Activity Code	Total Units	Equipment Number	Material Type	Code	Quantity
		132	P				
TIME IN 7:00 AM							
TIME OUT 3:00 PM							

# COUNTY HIGHWAY DAILY WORK REPORT

Name of Employee:

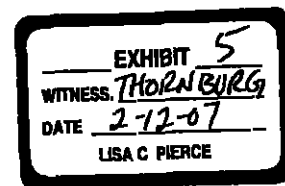
*Harold Gray* 111

Work Category

110

Date:

8 9 96



ACTIVITY LOCATION					LABOR		EQUIPMENT			MATERIALS DELIVERED*		
DESCRIPTION	FROM	TO	MILES	SECTION NUMBER	ACTIVITY CODE	HOURS	NUMBER	ODOMETER READING	MILES HOURS	TYPE	CODE	QUANTITY
100-N EAST F 175-W					132	8	79	149660 149654				8.65
	005409				332		37.80			1810		10.10
												9.95
100-N WEST 2E 175-W												10.10
	005407				332		29.85			1810		9.70
												10.05
100-N WEST F 300-W	005405				332		8.90			1810		8.90
						8						

ADDITIONAL COMMENTS		ACCOMPLISHMENT (Daily Production)		OTHER MATERIALS/SUPPLIES* (Attach Delivery/Sales Tickets)			
		Activity Code	Total Units	Equipment Number	Material Type	Code	Quantity
		132		79			
TIME IN 7:00 AM.							
TIME OUT 3:00 PM.							

# COUNTY HIGHWAY DAILY WORK REPORT

C/O - 1A - HWY

11/86

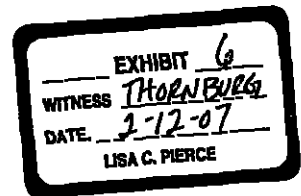
Name of Employee: Paul Pierce

3

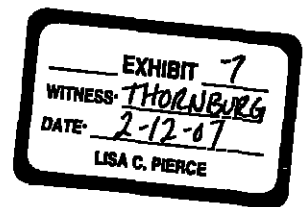
Work Category 2

Date:

8 9 2



ACTIVITY LOCATION <u>233-21</u>					LABOR		EQUIPMENT			MATERIALS DELIVERED*		
DESCRIPTION	FROM	TO	MILES	SECTION NUMBER	ACTIVITY CODE	HOURS	NUMBER	ODOMETER READING	MILES HOURS	TYPE	CODE	QUANTITY
<u>1100 W V</u>	<u>75 W</u>				<u>132</u>	<u>8</u>	<u>72</u>	<u>246122</u>		<u>Pug 1118</u>		<u>19.15</u>
<u>4</u>								<u>246390</u>				<u>9.55</u>
												<u>9.65</u>
												<u>9.65</u>
												<u>9.60</u>
		<u>005407</u>			<u>332</u>	<u>97.25</u>				<u>1810</u>		<u>10.10</u>
												<u>10.30</u>
<u>1100 W</u>	<u>125 W</u>											<u>9.00</u>
												<u>9.55</u>
<u>400 N W</u>	<u>95 Silphers RD</u>											<u>8.25</u>
ADDITIONAL COMMENTS					ACCOMPLISHMENT (Daily Production)		OTHER MATERIALS/SUPPLIES* (Attach Delivery/Sales Tickets)					
					Activity Code	Total Units	Equipment Number	Material Type		Code	Quantity	
					<u>22</u>	<u>8</u>	<u>72</u>					
TIME IN <u>1:00</u>												
TIME OUT <u>3:00</u>												



APPROVED BY STATE BOARD OF ACCOUNTS 1988

# COUNTY HIGHWAY DAILY WORK REPORT

Name of Employee: J. Williams 14 Work Category 08 Date: 08 09 96

ACTIVITY LOCATION 130-21					LABOR		EQUIPMENT			MATERIALS DELIVERED*		
DESCRIPTION	FROM	TO	MILES	SECTION NUMBER	ACTIVITY CODE	HOURS	NUMBER	ODOMETER READING	MILES HOURS	TYPE	CODE	QUANTITY
400~	75~	400~			132	8	55	10889		Pug	1-8	16.32
400~	"	"						11044		Pug	1-8	15.50
400~	"	"								Pug	1-8	16.00
400~	"	"								Pug	1-8	15.15
400~	"	"								Pug	1-8	14.60
400~	"	"								Pug	1-8	15.15
400~	"	"								Pug	1-8	15.15
400~	"	"								Pug	1-8	16.20
400~	"	"								Pug	1-8	14.95
005407					332	8	138,85		1810			

ADDITIONAL COMMENTS		ACCOMPLISHMENT (Daily Production)		OTHER MATERIALS/SUPPLIES* (Attach Delivery/Sales Tickets)			
		Activity Code	Total Units	Equipment Number	Material Type	Code	Quantity
		<u>132</u>	<u>8645</u>	<u>55</u>	<u>Diesel</u>	<u>1012</u>	<u>21g</u>
TIME IN <u>7:00 A.M.</u>							
TIME OUT <u>3:00 P.M.</u>							

# EXHIBIT M

Before the  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 34869

HONEY CREEK RAILROAD, INC  
PETITION FOR DECLARATORY ORDER

The deposition upon oral examination of RICKEY MILLER, a witness produced and sworn before me, Lisa C. Pierce, a Notary Public in and for the County of Hamilton, State of Indiana, taken on behalf of Gary L. Roberts, Roberts Pipeline Construction Company, Inc. and Roberts Construction, Inc., at the Henry County Courthouse, 1215 Race Street, Second Floor, New Castle, Henry County, Indiana, on the 12th day of February, 2007, commencing at the hour of 1:26 p.m., pursuant to Applicable Rules of Procedure, with written notice as to time and place thereof.

ALLIANCE COURT REPORTING  
P.O. BOX 78261  
INDIANAPOLIS, IN 46278-0261  
(317) 875-3914  
1 (877) 867-8600

PAGE 2

#### APPEARANCES

FOR "ROBERTS" John H. Brooke  
BROOKE LAW FIRM, P.C.  
112 East Gilbert Street  
Post Office Box 1071  
Muncie, Indiana 47308  
Phone (765) 741-1375

FOR "HONEY CREEK" Richard R. Wilson  
P.O. Box 825661  
127 Lexington Avenue  
Suite 108  
Allentown, Pennsylvania 16601  
Phone (610) 944-3201

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PAGE 3

3  
(1:26 p.m.)

February 12, 2007

RICKEY MILLER, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, relating to said matter was examined and testified as follows:

#### DIRECT EXAMINATION

QUESTIONS BY JOHN H. BROOKE

Q Okay. Would you state your name for the record, please?  
A Rickey Miller.  
Q All right. Mr. Miller, have you ever given a deposition before?  
A No, sir.  
Q Okay. Well, very briefly, I'm going to ask you a series of questions today. If you can just listen to my question and answer "yes," "no," "I don't know," whatever. Okay? Just as long as you have a verbal answer so she can get it on the tape recorded and it get down. Okay?  
A I got you.  
Q Very good. The other thing is, while we may be in a conversation, it's -- it's not unusual to talk when each other's talking. We've got to make sure that we don't do that for the court reporter. Okay?  
A Okay. No problem.  
Q Very good. Any time you want to take a break, we're more

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than happy to take a break.  
A Okay.  
Q If at any time I ask you a question that you don't understand or is unclear to you, ask me to restate it or rephrase it. Okay?  
A Okay.  
Q Sometimes I get a little ahead of myself and so it comes out garbled and no one can make sense of it. All right?  
A Okay.  
Q All right. Are you employed, sir?  
A Yes, sir.  
Q And where are you employed?  
A Henry County Highway.  
Q And how long have you worked for the Henry County Highway Department?  
A Roughly 11 years.  
Q Okay. What's your position with Henry County Highway Department?  
A Heavy equipment operator.  
Q Okay. Have you always been a heavy equipment operator?  
A Yes, sir.  
Q Okay. What types of equipment do you operate?  
A Pretty much everything.  
Q Okay. All right. And are the equipment items numbered?  
A Yes.

**RICKEY MILLER (02/12/07) HONEY CREEK RAILROAD, INC. PETITION FOR DECLATORY JUDGMENT**

SHEET 2 PAGE 5

5

1 Q Okay. And you -- you keep daily work reports; do you not?  
 2 A Yes, sir.  
 3 Q All right. So the number on the daily work report will tell  
 4 us what type of equipment it is, right?  
 5 A Yes, sir.  
 6 Q Okay. Here's Exhibit 1, just so I can get an understanding  
 7 of this. Exhibit 1 is a County Highway Daily Work Report for  
 8 Henry County, correct?  
 9 A Yes, sir.  
 10 Q It shows the number 121. That's a piece of equipment, right?  
 11 A No, sir. That is a truck.  
 12 Q All right. Okay. So -- let's see. So he'd be a truck  
 13 driver. Let's get -- I think I even saw one of yours in  
 14 here. Here's one, 111.  
 15 A That is --  
 16 Q -- equipment? You know what that piece of equipment is?  
 17 A Yes, sir.  
 18 Q What is that?  
 19 A It's a roller.  
 20 Q Okay.  
 21 A Steel -- steel-wheel roller.  
 22 Q All right. And do you know who operated that roller?  
 23 A No, sir. I don't.  
 24 Q Can you read his name there?  
 25 A That's Tommy Hardeman there.

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7

1 A Yes, sir.  
 2 Q All right. Do you remember doing this work out on 400 North?  
 3 A Yes, sir.  
 4 Q Okay. All right. Here's a map that we used in -- Exhibit  
 5 Number 3. And this is where the -- the railroad line is out  
 6 there to Sulfur Springs. Okay?  
 7 A Okay.  
 8 Q And let's see. Mr. Thornburg identified this (indicating) as  
 9 County Road 125 West. Are you familiar with that?  
 10 A Yes, sir.  
 11 Q And this would be County Road 400 North right here  
 12 (indicating).  
 13 A Yes, sir.  
 14 Q All right. Do you recall paving over the railroad tracks  
 15 there --  
 16 A Yes, sir.  
 17 Q -- on 400 North. All right. What do you recall about that?  
 18 A We just paved over the railroad tracks. I mean --  
 19 Q That would have been 1996, right?  
 20 A Yes. On this day right here.  
 21 Q All right. All right. Did you have any discussion with  
 22 anybody about paving over the railroad tracks?  
 23 A No.  
 24 Q Anybody tell you not to pave over the railroad tracks?  
 25 A No. My boss told me to pave over the railroad tracks.

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6

1 Q Okay. That's good 'cause --  
 2 A Yeah. It looks like him, I think.  
 3 Q Okay. Because I like your handwriting.  
 4 A Yeah. Yeah.  
 5 Q All right. That's -- that's -- Exhibit Number 4 is your  
 6 Daily Work Report, correct?  
 7 A Yes, sir.  
 8 Q All right. And it shows that you were -- on August 9th, 1996  
 9 you were operating a roller? Or what were you doing, the  
 10 110?  
 11 A 110's the paver.  
 12 Q Okay. That's the paver. You were --  
 13 A That's the --  
 14 Q -- driving the paver.  
 15 A Yes. I'm -- I was the paver operator that day.  
 16 Q Okay. What kind of paver is it?  
 17 A Greyhound 342.  
 18 Q All right. All right. And says that you were operating the  
 19 paver on County Road 400 North between County Road 75 West  
 20 and 125 West and 125 West to 200 West, correct?  
 21 A Yes, sir.  
 22 Q All right. And that would have been August 9th, 1996?  
 23 A Yes, sir.  
 24 Q All right. Good. And this is a report that you fill out to  
 25 keep track of your time, what you do, correct?

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8

1 Q Okay. And who was your boss at the time?  
 2 A Kenny Hartman.  
 3 Q Okay. Did you ask why you were paving over railroad tracks?  
 4 A I don't ask nothing.  
 5 Q Okay.  
 6 A I just do my job.  
 7 Q I understand. That's very good. Was there ever a time that  
 8 you recall the Highway Department having to go out there to  
 9 chip away the pavement because the railroad wanted to  
 10 operate?  
 11 A Not that I'm aware of, no.  
 12 Q Okay. Have you been back out there to pave on 400 North  
 13 since that time?  
 14 A I don't run the paver no more. No, sir.  
 15 Q Okay. Do you -- you're still a heavy equipment operator?  
 16 A Yes. I dig ditches now.  
 17 Q Okay.  
 18 A That's actually what I was hired to do.  
 19 Q Oh, run the --  
 20 A Run the Gradall.  
 21 Q Okay.  
 22 A So I just fill in occasionally on the paver. So --  
 23 Q Okay. Do you recall having to go -- anybody at the Highway  
 24 Department going back out there on 400 North to pave it  
 25 again?

**RICKEY MILLER (02/12/07) HONEY CREEK RAILROAD, INC. PETITION FOR DECLATORY JUDGMENT**

SHEET 3 PAGE 9

9

1 A No, sir. I don't recall that.  
 2 Q It's not like you paved this -- that road every couple years?  
 3 A Oh, no. No. It don't happen that way.  
 4 Q I've heard enough from the citizens of my own county how  
 5 infrequently roads are paved.  
 6 A Well, okay. We hear it quite often ourselves.  
 7 Q I'm sure you do. All right. Was 125 at some point paved  
 8 also?  
 9 A I don't know. I didn't do it.  
 10 Q Okay.  
 11 A No.  
 12 Q All right. All right. Do you recall any other time when  
 13 you've paved over in, Jefferson Township here, paved over  
 14 these railroad tracks?  
 15 A No, sir.  
 16 Q Okay. All right. So the best of your recollection is you  
 17 paved -- they -- you ran the paver and paved over the  
 18 railroad tracks on 400 North in 1996. And that's the last  
 19 time, right?  
 20 A That's the last time. Yes, sir.  
 21 MR. BROOKE: Okay. I have no further questions  
 22 then.  
 23 MR. WILSON: I have no questions.  
 24 MR. BROOKE: That's it. You're all done.  
 25 Now, you have the opportunity to read this and sign

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11

STATE OF INDIANA )  
 ) SS  
 COUNTY OF HAMILTON )

I, Lisa C. Pierce, a Notary Public in and for the  
 County of Hamilton, State of Indiana at large, do hereby  
 certify that RICKEY MILLER, the deponent herein, was by me  
 first duly sworn to tell the truth, the whole truth, and  
 nothing but the truth in the aforementioned matter,

That the foregoing deposition was taken on behalf of  
 Gary L. Roberts, Roberts Pipeline Construction Company, Inc  
 and Roberts Construction, Inc. at the Henry County  
 Courthouse, Second Floor, 1215 Race Street, New Castle, Henry  
 County, Indiana, on the 12th day of February, 2007,  
 commencing at the hour of 1 26 p m, pursuant to Applicable  
 Rules of Procedure.

That said deposition was taken down in stenograph notes  
 and afterwards reduced to typewriting under my direction, and  
 that the typewritten transcript is a true record of the  
 testimony given by said deponent, and thereafter presented to  
 said deponent for his signature, and that the signature of  
 said deponent to his deposition was waived by the deponent  
 and all parties present, the deposition to be read with the  
 same force and effect as if signed by him

That the parties were represented by their

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10

1 it to make sure the court reporter got everything accurate.  
 2 THE WITNESS: Okay.  
 3 Mr. Brooke: Or you can waive that signature. No  
 4 longer than this one was -- I mean, two minutes, three  
 5 minutes long -- I think she could get it pretty well  
 6 accurate, don't you?  
 7 THE WITNESS: Yes, sir.  
 8 MR. BROOKE: Okay. Well, why don't you just waive  
 9 signature.  
 10 THE WITNESS: Okay. We'll waive it then.  
 11  
 12 AND FURTHER THE DEPONENT SAITH NOT.  
 13 (1:33 p.m.)  
 14  
 15 (Signature Waived)  
 16 \_\_\_\_\_  
 17 RICKEY MILLER  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

PAGE 12

12

aforementioned counsel

I do further certify that I am a disinterested person  
 in this cause of action; that I am not a relative or attorney  
 of either party, or otherwise interested in the event of this  
 action, and am not in the employ of the attorneys for either  
 party

IN WITNESS WHEREOF, I have hereunto set my hand and  
 affixed my notarial seal this \_\_\_\_\_ of \_\_\_\_\_, 2007

NOTARY PUBLIC

My Commission Expires  
 April 13, 2013

County of Residence  
 Hamilton

<p><b>1</b></p> <p>1 [2] 8:6,7 1:26 [1] 3:1 1:33 [1] 10:13 11 [1] 4:16 110 [1] 6:10 110's [1] 6:11 111 [1] 6:14 12 [1] 3:2 121 [1] 6:10 125 [4] 6:20,20 7:9 9:7 1996 [4] 6:8,22 7:19 9:18</p>	<p><b>D</b></p> <p>daily [4] 5:1,3,7 6:8 day [2] 6:15 7:20 Department [4] 4:15,18 8:8,24 DEPONENT [1] 10:12 deposition [1] 3:11 dig [1] 8:16 DIRECT [1] 3:7 discussion [1] 7:21 ditches [1] 8:16 doing [2] 6:9 7:2 done [1] 9:24 down [1] 3:18 driver [1] 6:13 driving [1] 6:14 duly [1] 3:3</p>	<p>Jefferson [1] 9:13 job [1] 8:6 JOHN [1] 3:8</p> <p><b>K</b></p> <p>keep [2] 6:1 6:25 Kenny [1] 8:2 kind [1] 6:16</p> <p><b>L</b></p> <p>last [2] 9:18,20 line [1] 7:5 listen [1] 3:15 little [1] 4:7 long [2] 3:17 4:14 10:5 longer [1] 10:4 looks [1] 6:2</p>	<p>please [1] 3:9 point [1] 9:7 position [1] 4:17 Pretty [2] 4:23 10:5 problem [1] 3:24</p> <p><b>Q</b></p> <p>question [2] 3:15 4:3 QUESTIONS [4] 3:8,15 9:21,23 quite [1] 9:6</p>
<p><b>2</b></p> <p>200 [1] 6:20 2007 [1] 3:2</p>	<p><b>E</b></p> <p>each [1] 3:21 employed [2] 4:10,12 enough [1] 9:4 equipment [4] 4:19,20,22,24 5:4, 10,16,16 8:15 even [1] 5:13 everything [2] 4:23 10:1 EXAMINATION [1] 3:7 examined [1] 3:6 Exhibit [4] 5:6,7 6:5 7:4</p>	<p><b>M</b></p> <p>map [1] 7:4 matter [1] 3:6 mean [2] 7:18 10:4 MILLER [2] 3:3,10,11 minutes [2] 10:4,5 much [1] 4:23 myself [1] 4:7</p>	<p><b>R</b></p> <p>railroad [10] 7:5,14,18,22,24,25 8:3,9 9:14,18 ran [1] 9:17 read [2] 5:24 9:25 recall [4] 7:14,17 8:8,23 9:1,12 recollection [1] 9:16 record [1] 3:9 recorded [1] 3:18 relating [1] 3:5 remember [1] 7:2 rephrase [1] 4:4 report [4] 5:3,7 6:6,24 reporter [2] 3:23 10:1 reports [1] 5:1 restate [1] 4:4 RICKEY [2] 3:3,10 Road [5] 6:19,19 7:9,11 9:2 roads [1] 9:5 roller [4] 6:19,21,22 6:9 Roughly [1] 4:16 run [2] 8:14,19,20</p>
<p><b>3</b></p> <p>3 [1] 7:5 342 [1] 6:17</p>	<p><b>F</b></p> <p>familiar [1] 7:9 February [1] 3:2 fill [2] 6:24 8:22 first [1] 3:3 follows [1] 3:6 further [2] 9:21 10:12</p>	<p><b>N</b></p> <p>name [2] 3:9 5:24 North [7] 6:19 7:2,11,17 8:12,24 9:18 nothing [2] 3:5 8:4 number [4] 5:3,10 6:5 7:5 numbered [1] 4:24</p>	<p><b>S</b></p> <p>SAITH [1] 10:12 saw [1] 5:13 says [1] 6:18 see [2] 5:12 7:8 sense [1] 4:8 series [1] 3:14 shows [2] 5:10 6:8 sign [1] 9:25 signature [2] 10:3,9 since [1] 8:13 sir [2] 3:13 4:10,11,21 6:2,5,9,11, 17,23 6:7,21,23 7:1,3,10,13,16 8: 14 9:1,15,20 10:7 Sometimes [1] 4:7 Springs [1] 7:6 state [1] 3:9 Steel [1] 5:21 steel-wheel [1] 5:21 still [1] 8:15 Sulfur [1] 7:6 sworn [1] 3:4</p>
<p><b>4</b></p> <p>4 [1] 6:5 400 [7] 6:19 7:2,11,17 8:12,24 9: 18</p>	<p><b>G</b></p> <p>garbled [1] 4:8 given [1] 3:11 got [2] 3:19,22 10:1 Gradall [1] 8:20 Greyhound [1] 6:17</p>	<p><b>O</b></p> <p>occasionally [1] 8:22 often [1] 9:6 Okay [40] 3:9,14,16,18,23,24 4:2, 5,6,9,17,20,22,24 5:1,6,12,20 6: 1,3,12,16 7:4,6,7 8:1,3,5,12,15, 17,21,23 9:6,10,16,21 10:2,8,10 one [4] 4:8 5:13,14 10:4 operate [2] 4:22 8:10 operated [1] 5:22 operating [2] 6:9,18 operator [4] 4:19,20 6:15 8:15 opportunity [1] 9:25 other [2] 3:20 9:12 other's [1] 3:22 ourselves [1] 9:6 out [7] 4:7 6:24 7:2,5 8:8,12,24 over [4] 7:14,18,22,24,25 8:3 9: 13,13,17 own [1] 9:4</p>	<p><b>T</b></p> <p>tape [1] 3:18 testified [1] 3:6 Thornburg [1] 7:8 three [1] 10:4 today [1] 3:15 Tommy [1] 5:25 Township [1] 9:13 track [1] 6:25</p>
<p><b>7</b></p> <p>75 [1] 6:19</p>	<p><b>H</b></p> <p>handwriting [1] 6:3 happen [1] 9:3 happy [1] 4:1 Hardeman [1] 5:25 Hartman [1] 8:2 hear [1] 9:6 heard [1] 9:4 Heavy [2] 4:19,20 8:15 Henry [4] 4:13,14,17 5:8 Highway [4] 4:13,14,17 6:7 8:8, 23 hired [1] 8:18</p>	<p><b>P</b></p> <p>p.m. [2] 3:1 10:13 pave [4] 7:24,25 8:12,24 paved [4] 7:18 9:2,5,7,13,13,17, 17 pavement [1] 8:9 paver [4] 6:11,12,14,15,16,19 8: 14,22 9:17 paving [2] 7:14,22 8:3 piece [2] 5:10,16</p>	<p><b>I</b></p> <p>identified [1] 7:8 indicating [2] 7:8,12 infrequently [1] 9:5 items [1] 4:24</p>
<p><b>8</b></p> <p>867-8600 [1] 1:1 877 [1] 1:1</p>	<p><b>J</b></p>		
<p><b>9</b></p> <p>9th [2] 6:8,22</p>			
<p><b>A</b></p> <p>accurate [2] 10:1,6 actually [1] 8:18 ahead [1] 4:7 answer [2] 3:16,17 anybody [4] 7:22,24 8:23 August [2] 6:8,22 aware [1] 8:11 away [1] 8:9</p> <p><b>B</b></p> <p>back [2] 8:12,24 best [1] 9:16 between [1] 6:19 boss [2] 7:25 8:1 break [2] 3:25 4:1 briefly [1] 3:14 BROOKE [5] 3:8 9:21,24 10:3,8</p> <p><b>C</b></p> <p>cause [1] 6:1 chip [1] 8:9 citizens [1] 9:4 comes [1] 4:7 conversation [1] 3:21 correct [4] 5:8 6:6,20,25 County [10] 4:13,14,17 5:7,8 6: 19,19 7:9,11 9:4 couple [1] 9:2 court [2] 3:23 10:1</p>			

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**worked** [1] 4:14

---

**Y**

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ADDITIONAL COMMENTS		ACCOMPLISHMENT (Daily Production)		OTHER MATERIALS/SUPPLIES* (Attach Delivery/Sales Tickets)			
		Activity Code	Total Units	Equipment Number	Material Type	Code	Quantity
5 am - 10 am		132	8	111			
ME IN 7:00 AM							
F OUT 3:00 PM							

NMR OUT 3:00 PM

Send To Printer Back To TerraServer Change to 11x17 Print Size Show Grid Lines Change to Landscape

USGS 67 km E of Indianapolis, Indiana, United States 01 Jul 1984

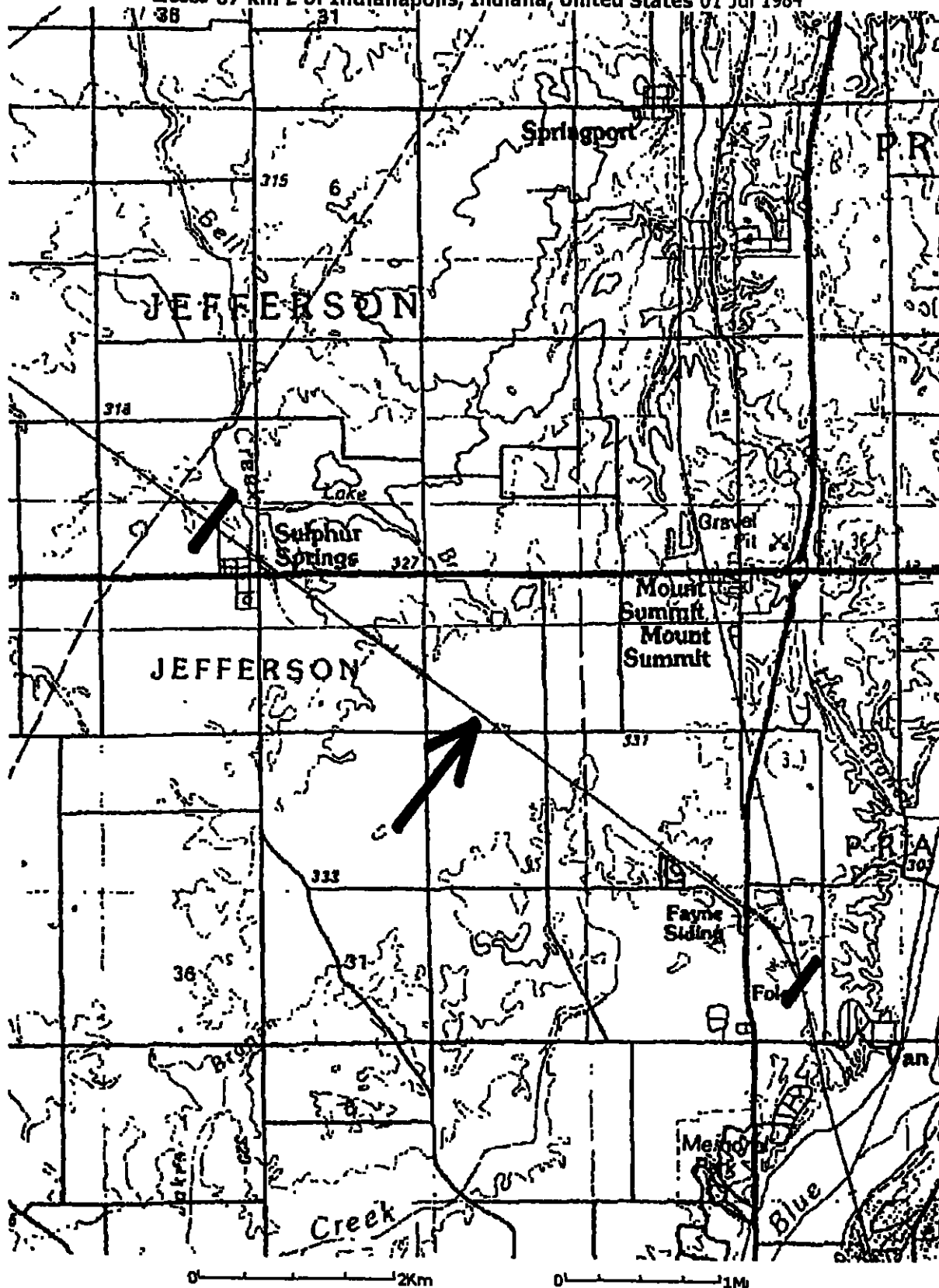


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EXHIBIT	3
WITNESS	SMITH
DATE	2-12-07
LISA C. PIERCE	

• •

# EXHIBIT N

•



Norfolk Southern Corporation  
Law Department  
Three Commercial Place  
Norfolk, Virginia 23510-9241

**James R. Paschall**  
**Senior General Attorney**

Writer's Direct Dial Number

(757) 629-2759  
fax (757) 533-4872

July 19, 2006

via fax 202-833-8831

Ms. Kathleen C Kauffman  
Ackerson & Kauffman Fex PC  
1250 H. Street, N.W., Suite 850  
Washington, DC 20005

Re. STB Finance Docket No. 34869, Honey Creek Railroad, Inc. - Petition for  
Declaratory Order - Notice of Deposition and Production of Records to  
Non-Party Norfolk Southern Railway Company

Dear Ms. Kauffman:

This respond to the July 14, 2006 letter and attachments of Mr. Eric Bolton of your firm to Mr. Roger Petersen and Mr. Paul Gilley of Norfolk Southern Corporation. Non-party Norfolk Southern Railway Company (NSR) objects to any discovery, including without limitation interrogatories, depositions or requests for production of documents or records, directed to it in this proceeding as immaterial, irrelevant and burdensome. NSR rejects the notice of deposition and records production request.

As we read and understand the petition for declaratory order, the sole issue before the Surface Transportation Board is whether or not Honey Creek Railroad, Inc. consummated the abandonment of the railroad line that is the subject of the STB decisions in STB Docket No. AB-856. The sole material, relevant and conclusive fact in such determinations is whether the railroad has filed a notice of consummation with the STB. See *Aban. And Discon. Of R. Lines and Transp. Under 49 U.S.C. 10903, 2 S.T.B. 311, 318 (1997)*; *Almono LP - Abandonment Exemption - In Allegheny County, PA*, STB Docket No. AB-842X (STB served January 28, 2004); *Burlington Northern and Santa Fe Railway Company, The - Abandonment Exemption - In Washington County, OR*, STB Docket No. AB-6 (Sub-No. 383X) (STB served December 28, 2001); *Track Tech, Inc. - Abandonment Exemption - In Adair and Union Counties, IA*, STB Docket No. AB-493 (Sub-No. 7X) (STB served April 28, 1999). Therefore, the information sought in your discovery requests is irrelevant and immaterial. Under such circumstances, it would be particularly burdensome to a non-party to be called upon to respond to such discovery. Moreover, even if the information sought were relevant,

Ms. Kathleen C. Kauffman  
July 19, 2006  
Page 2 of 2

most, if not all, of it would be in the possession of Honey Creek Railroad, Inc., making requests for the same information to a non-party redundant as well as burdensome and unnecessary

A non-party can be compelled to respond to discovery in an STB proceeding only under a subpoena issued pursuant to 49 U.S.C. 721(c). See *East West Resort Transportation, LLC, and TMS, LLC, d/b/a Colorado Mountain Express – Petition for Declaratory Order – Motor Carrier Transportation of Passengers in Colorado*, STB Docket No. MC-F-21008, STB served June 1, 2005. We are quite confident that the STB will not issue a subpoena to require NSR, a non-party, to respond to discovery that is irrelevant and immaterial to the issue before the Board and that is also redundant, unnecessary and burdensome.

Very truly yours,

  
James R. Paschall

cc: via fax 814-944-6978  
Mr. Richard R. Wilson  
127 Lexington Avenue, Suite 100  
Altoona, PA 16601

via fax 765-938-2803  
Mr. William B. Keaton  
126 West Second Street  
Rushville, IN 46173-1874

via fax 765-288-7763  
Mr. John H. Brooke  
P. O. Box 1071  
112 E. Gilver Street  
Muncie, IN 47208-1071

# EXHIBIT O

**SCIME, MIKE**

---

**From:** SCIME, MIKE  
**Sent:** Thursday, August 22, 2002 9 00 AM  
**To:** LOVEALL, LARRY  
**Cc:** 'mgrain@lightbound.com'  
**Subject:** RE: Honey Creek Railroad

Larry,

I spoke with Bill Smith, President of the Honey Creek Railroad this morning in response to your e-mail. I advised Bill that it was in his best interest to get his abandonment application filed with the STB as soon as possible. He expressed some hesitation to do this as he doesn't want the right-of-way to revert (as it would once the STB approves an abandonment).

As an alternative, Honey Creek plans to instruct its M-of-W contractor to remove the crossbucks and any crossing signals and to conspicuously remove a section of rail on both sides of each crossing. Once this is done, hazardous materials trucks and school buses are no longer required to stop at the "crossings".

Bill - Please let Larry Loveall at our Greenfield District know when you plan to have this work started and completed. His phone number is 317-462-7751.

Thanks

-----Original Message-----

**From:** LOVEALL, LARRY  
**Sent:** Wednesday, August 21, 2002 8 33 AM  
**To:** SCIME, MIKE  
**Subject:** Honey Creek Railroad

Interested on where the abandonment status of this railroad

Recently a new company has relocated here and transports hazardous waste, we have received several inquiries of the safety issue surrounding the fact that the general public knows there are no trains possible on this track and do not slow down. We will not expect these haz mat trucks to be stopped at these crossings. Let me know.

LaVon

# EXHIBIT P

SERVICE DATE  
SEP 20 1993

PR-7035-013  
DO

INTERSTATE COMMERCE COMMISSION  
NOTICE OF EXEMPTION

Finance Docket No. 323324

HONEY CREEK RAILROAD, INC.  
ACQUISITION AND OPERATION EXEMPTION  
LINE OF CONSOLIDATED RAIL CORPORATION

Honey Creek Railroad, Inc. (Honey Creek) has non-  
exclusive notice of exemption to acquire and  
operate approximately 0.95 miles of rail line owned by  
Consolidated Rail Corporation in Henry County, IN. The line  
extends generally between milepost 104.1, which is located  
at the intersection of the line with the main line of the  
Norfolk & Western Railway Company, and milepost 100.05,  
which is located at the intersection of the line with County  
Road 600N, all of which is located in Prairie, Jefferson,  
and Sulphur Springs Townships. This exemption became  
effective on September 3, 1993.

Any comments must be filed with the Commission and  
served on: William B. Keaton, Esq., Keaton and Keaton,  
P.C., 26 West Second Street, Rushville, IN 46173-1500.

This notice is filed under 49 CFR 1150.31. If the  
notice contains false or misleading information, the  
exemption is void ab initio. Petitions to revoke the  
exemption under 49 U.S.C. 110505(d) may be filed at any time.

The parties had expected to consummate the proposed  
transaction on or before September 4, 1993, but stated that they  
could not do so before the effective date of this notice.

Finance Docket No. 32932

The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 14, 1993

Arthur J. Conner, Jr., David M. Kanechnik, Directors, Office

of Proceedings

(STAL)

  
Sidney L. Strickland, Jr.  
Secretary

# EXHIBIT Q

DO

ER-7035-01-P

INTERSTATE COMMERCE COMMISSION

NOTICE

[Docket No. AB-167 (Sub-No. 1122X)]

CONSOLIDATED RAIL CORPORATION--ABANDONMENT EXEMPTION--

IN HENRY AND MADISON COUNTIES, IN

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 Subpart F--Exemption Abandonments to abandon its Honey Creek Secondary Line. The line extends 10.6 miles from approximately milepost 110.051 near Honey Creek, in Henry County, to approximately milepost 120.651 in Anderson, Madison County.

Conrail has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such

) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the

2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12

(newspaper publication), and 49 CFR 1152.50(d) (1) (notice to governmental agencies) have been met.

SERVICE DATE

DEC 21 1993

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.--Abandonment--Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 20, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues, formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29<sup>3</sup> must be filed by January 3, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must

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<sup>1</sup> A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C. 2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

<sup>2</sup> See Exempt. of Rail Abandonment--Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

<sup>3</sup> The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

Docket No. AB-167 (Sub-No. 1-22X)

be filed by January 10, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Two Commerce Square, 2001 Market St., P.O. Box 41416, Philadelphia, PA 19101-1416.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by December 23, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed where appropriate, in a subsequent decision.

Decided: December 14, 1993.